

# Exhibit 114

Chicago, IL

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UNITED STATES DISTRICT COURT

## DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE )  
PRICE LITIGATION ) MDL No. 1456  
 ) Civil Action  
THIS DOCUMENT RELATES TO: ) #01-12257-PBS  
United States of America, )  
ex rel. Ven-A-Care of the ) Judge Patti B. Saris  
Florida Keys, Inc., v. )  
Abbott Laboratories, Inc., )  
and Hospira, Inc. )  
CIVIL ACTION NO. 06-11337-PBS )

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HIGHLY CONFIDENTIAL

DEPOSITION OF VIRGINIA TOBIASON - VOLUME III

JANUARY 22, 2008

(CAPTIONS CONTINUE ON FOLLOWING PAGES)

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<p style="text-align: right;">Page 560</p> <p>1 UNITED STATES DISTRICT COURT  2 DISTRICT OF MASSACHUSETTS  3 IN RE PHARMACEUTICAL )  4 INDUSTRY AVERAGE WHOLESAL )  5 PRICE LITIGATION ) MDL No. 1456  6 ) Civil Action  7 THIS DOCUMENT RELATES TO: ) #01-CV-12257-PBS  8 State of Arizona, v. Abbott )  9 Labs, et al., Civil Action ) Judge Patti B. Saris  10 No. 06-CV-11069-PBS )  11 *****  12 UNITED STATES DISTRICT COURT  13 FOR THE DISTRICT OF MASSACHUSETTS  14 IN RE PHARMACEUTICAL ) MDL No. 1456  15 INDUSTRY AVERAGE WHOLESAL ) Master File No.  16 PRICE LITIGATION ) 01-12257-PBS  17 )  18 THIS DOCUMENT RELATES TO: ) Judge Patti B. Saris  19 State of California, ex rel. )  20 Ven-A-Care v. Abbott ) Magistrate Judge  21 Laboratories, Inc., et al., ) Marianne Bowler  22 Case #: 1:03-cv-11226-PBS )</p>	<p style="text-align: right;">Page 562</p> <p>1 APPEARANCES:  2  3 On behalf of the United States of America;  4 UNITED STATES ATTORNEY'S OFFICE  5 SOUTHERN DISTRICT OF FLORIDA  6 by MS. ANN M. ST. PETER-GRIFFITH  7 Assistant U.S. Attorney  8 99 N.E. Fourth Street  9 Miami, Florida 33132  10 (305) 961-9419  11  12 On behalf of the State of California;  13 STATE OF CALIFORNIA  14 DEPARTMENT OF JUSTICE by  15 MR. ELISEO SISNEROS  16 Deputy Attorney General  17 Bureau of Medi-Cal Fraud &amp; Elder Abuse  18 110 West A Street  19 Suite 1100  20 San Diego, California 92101  21 (619) 688-6043  22</p>
<p style="text-align: right;">Page 561</p> <p>1 HIGHLY CONFIDENTIAL  2 DEPOSITION OF VIRGINIA TOBIASON - VOLUME III  3  4 Continuation of the videotaped  5 deposition of VIRGINIA TOBIASON, Volume III,  6 pages 559 through 833, taken pursuant to the  7 Federal Rules of Civil Procedure of the United  8 States District Courts pertaining to the taking of  9 depositions, taken before LAURA R. RENKE, RDR,  10 CRR, Certified Shorthand Reporter of the State of  11 Illinois, at 77 West Wacker Drive, 35th Floor,  12 Conference Room A, Chicago, Illinois, on Tuesday,  13 January 22, 2008, at 9:08 a.m.  14  15  16  17  18  19  20  21  22</p>	<p style="text-align: right;">Page 563</p> <p>1 APPEARANCES: (CONTINUED)  2  3 On behalf of the Relator Ven-a-Care of  4 the Florida Keys;  5 THE BREEN LAW FIRM by  6 MR. JAMES JOSEPH BREEN  7 5755 North Point Parkway  8 Suite 39  9 Alpharetta, Georgia 30022  10 (770) 740-0008  11  12 On behalf of the Defendants.  13 JONES DAY by  14 MS. TINA M. TABACCHI  15 MR. GABRIEL H. SCANNAPIECO  16 77 West Wacker Drive  17 Chicago, Illinois 60601-1692  18 (312) 782-3939  19  20  21 ALSO PRESENT:  22 MR. ANTHONY MICHELETTO, Videographer</p>

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<p style="text-align: right;">Page 568</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1           THE VIDEOGRAPHER: This is Anthony</p> <p>2           Micheletto, representing Henderson Legal</p> <p>3           Services. I am the operator of this camera.</p> <p>4           This is the videotaped deposition of</p> <p>5           Virginia Tobiason as being taken pursuant to</p> <p>6           Federal Rules of Civil Procedure on behalf of the</p> <p>7           plaintiff.</p> <p>8           We are on the record on January 22nd,</p> <p>9           2008. The time is 9:08 a.m. as indicated in the</p> <p>10          video screen. We are at the offices of Jones</p> <p>11          Day, 77 West Wacker Drive, Chicago, Illinois.</p> <p>12          The case is captioned In Re</p> <p>13          Pharmaceutical Industry Average Wholesale Price</p> <p>14          Litigation, Case No. 01-12257-PBS.</p> <p>15          Will the attorneys please identify</p> <p>16          themselves for the video record?</p> <p>17          MS. ST. PETER-GRIFFITH: Ann St. Peter-</p> <p>18          Griffith from the United States Attorney's</p> <p>19          office, Southern District of Florida, on behalf</p> <p>20          of the United States.</p>	<p style="text-align: right;">Page 570</p> <p>1 I'll agree.</p> <p>2           MS. ST. PETER-GRIFFITH: Okay. And</p> <p>3           would you mind, since we left off last summer in</p> <p>4           the 700s for the Texas exhibits just starting</p> <p>5           numbering today's exhibits with Tobiason 1,</p> <p>6           Tobiason 2?</p> <p>7           MS. TABACCHI: However you want to</p> <p>8           number them is fine.</p> <p>9           MS. ST. PETER-GRIFFITH: Okay.</p> <p>10          VIRGINIA TOBIASON,</p> <p>11          called as a witness herein, having been first</p> <p>12          duly sworn and having testified, was examined and</p> <p>13          testified further as follows:</p> <p>14          EXAMINATION (Resumed)</p> <p>15          BY MS. ST. PETER-GRIFFITH:</p> <p>16          Q. Good morning, Ms. Tobiason.</p> <p>17          A. Good morning.</p> <p>18          Q. Ma'am, what did you do to prepare for</p> <p>19          your deposition here today?</p> <p>20          A. I had Tin -- my attorneys and I met</p>
<p style="text-align: right;">Page 569</p> <p>1           MR. BREEN: Jim Breen on behalf of the</p> <p>2           relator, Ven-A-Care of the Florida Keys.</p> <p>3           MR. SISNEROS: Eliseo Sisneros, Deputy</p> <p>4           Attorney General, State of California.</p> <p>5           MS. TABACCHI: Tina Tabacchi and</p> <p>6           Gabriel Scannapieco on behalf of the defendants.</p> <p>7           THE VIDEOGRAPHER: The court reporter</p> <p>8           today is Laura Renke from Henderson Legal</p> <p>9           Services of Washington, D.C.</p> <p>10          Please swear in the witness.</p> <p>11          THE REPORTER: If you would raise your</p> <p>12          right hand, please.</p> <p>13          THE WITNESS: Mm-hmm.</p> <p>14          (Witness sworn.)</p> <p>15          THE WITNESS: I do.</p> <p>16          THE REPORTER: Thank you.</p> <p>17          MS. ST. PETER-GRIFFITH: Before we get</p> <p>18          started, a couple of preliminary matters. Tina,</p> <p>19          we're now operating under the Federal Rules. I</p> <p>20          think we started that the last time around. Is</p> <p>21          that --</p> <p>22          MS. TABACCHI: The Federal Rules apply,</p>	<p style="text-align: right;">Page 571</p> <p>1 yesterday.</p> <p>2           Q. Okay. And how long did you meet?</p> <p>3           A. Oh, a few hours.</p> <p>4           Q. Approximately how many hours?</p> <p>5           A. I don't know. Probably maybe four.</p> <p>6           Q. Okay. And did you review any documents</p> <p>7           in preparation for today's deposition?</p> <p>8           A. No.</p> <p>9           Q. Have you reviewed your prior testimony?</p> <p>10          A. I did not.</p> <p>11          Q. Okay. Do you recall after your last</p> <p>12          deposition whether there was any testimony that</p> <p>13          you needed to change or that, upon further</p> <p>14          reflection, wanted to amplify in any way?</p> <p>15          MS. TABACCHI: Object to the form.</p> <p>16          THE WITNESS: I don't -- I don't recall</p> <p>17          any, but I -- I don't know if I went through</p> <p>18          every -- every bit of it.</p> <p>19          BY MS. ST. PETER-GRIFFITH:</p> <p>20          Q. Okay. Did you at some point review</p> <p>21          your prior testimony?</p> <p>22          MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 572</p> <p>1 THE WITNESS: Some of it.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Okay. Which portions?</p> <p>4 A. I don't remember.</p> <p>5 MS. TABACCHI: Can we just clarify</p> <p>6 because there have been three different</p> <p>7 depositions.</p> <p>8 MS. ST. PETER-GRIFFITH: Mm-hmm.</p> <p>9 MS. TABACCHI: And Ms. Tobiason has</p> <p>10 reviewed it, so I had some but not others because</p> <p>11 the deposition remains open.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Okay. I'm talking about the</p> <p>14 depositions in the AWP litigation --</p> <p>15 A. Mm-hmm.</p> <p>16 Q. -- starting with the Texas deposition</p> <p>17 which was started last March.</p> <p>18 A. I don't -- I don't think I have any</p> <p>19 changes, but I don't recollect everything that I</p> <p>20 said.</p> <p>21 Q. Okay. Ma'am, at any time --</p> <p>22 A. Mm-hmm.</p>	<p style="text-align: right;">Page 574</p> <p>1 maintained on Abbott drugs and products sold</p> <p>2 within the Hospital Products division?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Could you clarify what</p> <p>5 you mean by spread?</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Well, how do you interpret spread?</p> <p>8 A. Well, I interpret spread to mean what's</p> <p>9 in the OIG guidance. And it's, as I understand</p> <p>10 it, the difference between what the payor pays</p> <p>11 and cost of product.</p> <p>12 Q. And cost of product? What cost of</p> <p>13 product?</p> <p>14 A. I assume it's the cost of cost of the</p> <p>15 product, supplying the product, and all the</p> <p>16 services involved with the product.</p> <p>17 Q. Have you ever heard of the term "AWP</p> <p>18 spread"?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. What is that?</p> <p>21 A. That if a payor pays based on average</p> <p>22 wholesale price, a payor requires -- you know,</p>
<p style="text-align: right;">Page 573</p> <p>1 Q. -- during your tenure with Abbott, did</p> <p>2 you ever consider making any reports to HHS OIG</p> <p>3 or to the federal government or to any state</p> <p>4 government concerning any practices of the Abbott</p> <p>5 Home Infusion division?</p> <p>6 A. No.</p> <p>7 Q. Why not?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: Is there anything in</p> <p>10 specific -- specifically that I would have that</p> <p>11 you're trying to question me about?</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. No, I just want to know why it is that</p> <p>14 you never felt the need to report any practices</p> <p>15 to any state or federal entity in home infusion.</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I never saw any need to.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Okay. At any time during your tenure</p> <p>20 as an Abbott employee, did you ever consider</p> <p>21 making any reports to any state or federal</p> <p>22 official concerning the spreads that were</p>	<p style="text-align: right;">Page 575</p> <p>1 payors decided they will pay on AWP, that it's --</p> <p>2 that it's the amount that they used AWP as their</p> <p>3 payment amount and that that would be the</p> <p>4 difference between that and what the cost of the</p> <p>5 product is.</p> <p>6 Q. At any time --</p> <p>7 A. Cost of -- I should say cost of product</p> <p>8 and services. I should say it's -- I should</p> <p>9 clarify that.</p> <p>10 Q. And where did you get -- have -- how</p> <p>11 did you come to have that understanding of the</p> <p>12 term "AWP spread"?</p> <p>13 A. Oh. Well, I believe that that -- I --</p> <p>14 that came out starting with newspaper articles</p> <p>15 and also the OIG guidelines.</p> <p>16 Q. Which OIG guidelines?</p> <p>17 A. On pharmaceutical practices. I think</p> <p>18 it was -- I think -- I'm not positive -- around</p> <p>19 2003.</p> <p>20 Q. Okay.</p> <p>21 A. When they issued a -- some kind of</p> <p>22 report.</p>

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<p style="text-align: right;">Page 576</p> <p>1 MS. TABACCHI: I'm sorry. I don't mean 2 to -- 3 THE WITNESS: Guidelines. 4 MS. TABACCHI: I don't mean to 5 interrupt, Ms. Tobiason. I'm just not sure 6 whether your glasses is going to interfere with 7 your -- 8 THE WITNESS: Oh. 9 MS. TABACCHI: -- microphone. 10 THE WITNESS: I'm sorry. Okay. Thank 11 you. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Ma'am, at any time during your tenure 14 as an Abbott employee -- 15 A. Mm-hmm. 16 Q. -- did you ever consider reporting to 17 any state or federal official the differences 18 between Abbott's list price or catalog price and 19 the prices charged to Abbott customers in the 20 contracts? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: No.</p>	<p style="text-align: right;">Page 578</p> <p>1 not to reveal the substance of any communications 2 with counsel to the extent that your answer would 3 require you to do so. 4 THE WITNESS: Mm-hmm. No. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Would that have been something that you 7 would have been aware of had such a disclosure 8 been made given your position? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: I would not -- I would 11 not necessarily have been aware of that. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Now, ma'am, are you anticipating 14 retiring from Abbott? 15 MS. TABACCHI: Object to the form. At 16 any time? 17 THE WITNESS: Well, eventually, yes. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Okay. 20 A. I've been there 26 years. Yes, I think 21 so. 22 Q. Now, I could be mistaken, but I thought</p>
<p style="text-align: right;">Page 577</p> <p>1 MS. TABACCHI: Lack of foundation. 2 BY MS. ST. PETER-GRIFFITH: 3 Q. Why not? 4 A. I never thought there was an issue. 5 Q. Okay. To your knowledge, did anyone 6 within Abbott ever report that information to any 7 state or federal official? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: Hmm. Anyone? 10 BY MS. ST. PETER-GRIFFITH: 11 Q. To your knowledge. 12 A. To my knowledge -- and there's a lot of 13 Abbott employees -- I have no knowledge of 14 anybody doing that. 15 Q. While you were working within Abbott's 16 compliance department, Office of Compliance, did 17 anyone ever make any disclosures concerning AWP 18 spread or the differences between contract price 19 and catalog price that they felt needed to be 20 disclosed to any state or federal official? 21 MS. TABACCHI: Object to the form. 22 I'm also going to caution the witness</p>	<p style="text-align: right;">Page 579</p> <p>1 that I had heard that you may be contemplating 2 retirement soon. Is that an inaccurate statement 3 or -- 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: I haven't made a decision 6 yet. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Okay. Is it something that you may be 9 considering doing in the near future? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: There's a possibility, 12 yes. 13 BY MS. ST. PETER-GRIFFITH: 14 Q. Okay. When -- when might that -- when 15 might you possibly retire, make your decision to 16 retire? 17 A. I don't know. I haven't made a 18 decision. 19 Q. Ma'am, what I'd like to do is go over a 20 couple of exhibits that Mr. Haviland had raised 21 with you the last time you were. And I can give 22 you copies, although I don't have copies of them</p>

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<p style="text-align: right;">Page 580</p> <p>1 as numbered. I'd just like to -- it's Exhibits 2 757 and 768. 3 MS. ST. PETER-GRIFFITH: And, Tina, 4 I've got extra copies over here. 5 MS. TABACCHI: Okay. 6 THE WITNESS: Can I ask a question? 7 Who is Mr. Haviland? 8 MS. ST. PETER-GRIFFITH: He was the 9 gentleman who was asking you questions the last 10 time we were here. 11 MS. TABACCHI: One of the last times 12 that we were here. 13 THE WITNESS: Oh, okay. I don't 14 remember. Okay. All right. 15 MR. SISNEROS: Sorry. What was the 16 number of the exhibit? 17 MR. BREEN: 767 and 768. 18 MS. TABACCHI: 767 and 768. 19 BY MS. ST. PETER-GRIFFITH: 20 Q. Ma'am, if you want to just take a few 21 minutes and review them. 22 A. Mm-hmm.</p>	<p style="text-align: right;">Page 582</p> <p>1 A. But I remember them from my last 2 deposition. 3 Q. Okay. My question is, other than from 4 your last deposition, do you have any further 5 recollection of these documents? 6 A. To the best of my knowledge, I -- I 7 don't remember them. But -- 8 Q. Do you know whether the -- do you have 9 any recollection as to whether the two might be 10 related? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: Well, I'm -- concerning 13 the timing, it looks like they may be related. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Do you have -- do you know -- are you 16 familiar with the regulation that's attached to 17 the memorandum from -- the interoffice 18 correspondence from you? 19 MS. TABACCHI: Object to the form. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. I'm sorry. The proposed rule, not the 22 regulation.</p>
<p style="text-align: right;">Page 581</p> <p>1 (Off-the-record discussion.) 2 MS. TABACCHI: Ann, the first one is 3 just two pages, and the second one is one page. 4 Is that right? 5 MS. ST. PETER-GRIFFITH: Well, she has 6 -- I didn't copy the regulation that's on the 7 back of -- 8 MS. TABACCHI: Oh, okay. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Ma'am, have you had an opportunity to 11 review these? 12 A. No, I'm still doing it. 13 Q. Ma'am, are you done reviewing? 14 A. I'm still working on it. 15 Yes, I'm done. 16 Q. Okay. Ma'am, do you recognize these 17 documents? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I don't actually remember 20 -- recollect these documents. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Okay. Do you --</p>	<p style="text-align: right;">Page 583</p> <p>1 A. Well, I -- I see the proposed rule, and 2 I -- I believe I remember that this did come out, 3 yes. 4 Q. Okay. 5 A. Mm-hmm. 6 Q. And was it the start of national drug 7 pricing controls? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I think that this 10 regulation talks about establishing national fee 11 screens. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Okay. Do you see in your memo wherein 14 it says, "This is definitely the start of 15 national 'drug pricing' controls," under Major 16 Issues? 17 A. Yes, I -- I see that. 18 Q. Was this particular proposed rule the 19 start of national drug pricing control? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I -- I don't -- this 22 proposed rule laid out different options that CMS</p>

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<p style="text-align: right;">Page 584</p> <p>1 might take. I see that. And then over the --</p> <p>2 over the following years, I don't remember</p> <p>3 specific CMS proposals or legislation that put in</p> <p>4 place national drug pricing controls. I just</p> <p>5 know this was part of -- just, you know, this was</p> <p>6 proposed to change the way they paid for drugs.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Now, in June of 1991, you were still</p> <p>9 the director of reimbursement within home</p> <p>10 infusion?</p> <p>11 A. I was the manager of reimbursement</p> <p>12 services.</p> <p>13 Q. Okay. Why would you be writing this</p> <p>14 particular memo?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: I believe I would have</p> <p>17 written this memo because, as I stated, that they</p> <p>18 could have a change in reimbursement for pain</p> <p>19 management and home chemotherapy.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Okay. If you'll look on page 2 of the</p> <p>22 memo.</p>	<p style="text-align: right;">Page 586</p> <p>1 A. I think I would have thought because</p> <p>2 Lupron was an oncology drug and renal was</p> <p>3 reimbursed incident to Part B that there could</p> <p>4 have been some implications. And I was an Abbott</p> <p>5 employee.</p> <p>6 Q. Did Abbott's home infusion consign or</p> <p>7 otherwise dispense Ross and TAP products to its</p> <p>8 consignment partners?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I didn't handle the</p> <p>11 contracting process, nor the inventory. But I do</p> <p>12 believe that we probably did consign Ross. But I</p> <p>13 don't remember us doing TAP.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Is it possible, but you just don't</p> <p>16 remember?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I -- I don't think that</p> <p>19 was my area of responsibility, what we consigned.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Well, would reimbursement have</p> <p>22 submitted claims for Lupron?</p>
<p style="text-align: right;">Page 585</p> <p>1 A. Mm-hmm. Mm-hmm.</p> <p>2 MS. TABACCHI: Ms. Tobiason, I need to</p> <p>3 remind you to answer audibly for the court</p> <p>4 reporter, yes or no.</p> <p>5 THE WITNESS: Yes. Okay. Sorry.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Do you see that last bullet point, the</p> <p>8 last sentence? It says, "I would think Renal" --</p> <p>9 or "TAP or Renal could use this argument</p> <p>10 effectively." Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Did you provide any guidance concerning</p> <p>13 federal or state Medicare or Medicaid statutes or</p> <p>14 regulations or proposed rules beyond the home</p> <p>15 infusion arena in '91?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I don't recollect doing</p> <p>18 that.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Do you know why you would have been</p> <p>21 providing a possible argument for TAP or renal in</p> <p>22 this memo?</p>	<p style="text-align: right;">Page 587</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: Well, we -- I just don't</p> <p>3 think Lupron was involved. I don't remember</p> <p>4 claims with Lupron. But I didn't look at every</p> <p>5 claim.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Okay. Ma'am, if you could take the</p> <p>8 second memo -- I'm sorry. Not -- not the first</p> <p>9 page, the second memo right in front of you.</p> <p>10 A. The one dated June 14?</p> <p>11 Q. Correct. It says at the top from --</p> <p>12 A. Mm-hmm.</p> <p>13 Q. -- Donald Robertson. Now, I deposed</p> <p>14 Mr. Robertson, and he indicated that he did not</p> <p>15 write this memo. He signed it, but he didn't</p> <p>16 write this memo. And he thought you might have.</p> <p>17 Do you have any recollection of writing this</p> <p>18 memo?</p> <p>19 A. No. No.</p> <p>20 Q. No, you don't have a recollection</p> <p>21 writing the memo? Is it possible that you could</p> <p>22 have written the memo?</p>

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<p style="text-align: right;">Page 588</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I have no recollection of</p> <p>3 writing this memo, and with the information in</p> <p>4 here, I have -- I don't remember any of this</p> <p>5 information, so I doubt I would have written this</p> <p>6 memo.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Do you remember receiving this memo?</p> <p>9 A. No.</p> <p>10 Q. Do you know who else within Abbott</p> <p>11 alternate site may have written this memo on</p> <p>12 behalf of Mr. Robertson?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Did you during your tenure as the</p> <p>17 manager of reimbursement services provide any</p> <p>18 guidance on state or federal Medicare or Medicaid</p> <p>19 statutes, regulations, rules, proposed rules</p> <p>20 beyond the home infusion arena?</p> <p>21 MS. TABACCHI: Object to the form. Did</p> <p>22 you just ask the same question --</p>	<p style="text-align: right;">Page 590</p> <p>1 reimbursement product sales. There was also</p> <p>2 legal. There was -- that's a very broad</p> <p>3 category. There were government affairs people.</p> <p>4 It depended on what issue.</p> <p>5 Q. Okay. Well, let me ask you it this</p> <p>6 way. Do you recall anyone from alt site coming</p> <p>7 to you with questions concerning Medicaid or</p> <p>8 Medicare statutes, regulations, rules, or</p> <p>9 proposed rules during your tenure within home</p> <p>10 infusion?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I'm sure it's possible.</p> <p>13 I don't recollect specific conversations.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Who within product sales, to your</p> <p>16 knowledge, could individuals within alt site go</p> <p>17 to with questions about Medicare or Medicaid?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: Alt site. Could you be</p> <p>20 more specific?</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Sure. Alternate Site Product Sales.</p>
<p style="text-align: right;">Page 589</p> <p>1 MS. ST. PETER-GRIFFITH: No.</p> <p>2 MS. TABACCHI: -- a minute ago? Okay.</p> <p>3 THE WITNESS: Could you repeat that</p> <p>4 question?</p> <p>5 MS. ST. PETER-GRIFFITH: Sure.</p> <p>6 Can you read it back, please?</p> <p>7 (Record read.)</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: Well, it's possible, but</p> <p>10 I don't recollect specifics. I -- we have a lot</p> <p>11 of different areas.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Was there someone else within the Alt</p> <p>14 Site Products division that helped with the</p> <p>15 interpretation or construction of Medicare or</p> <p>16 Medicaid statutes, rules, regulations, or</p> <p>17 proposed rules?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Who?</p> <p>22 A. Well, I believe there was a manager</p>	<p style="text-align: right;">Page 591</p> <p>1 A. Product sales. I -- I don't remember</p> <p>2 the time frame, but they did have a manager</p> <p>3 reimbursement at Alternate Site Product Sales.</p> <p>4 Q. Do you know who that was?</p> <p>5 A. Michael Heggie.</p> <p>6 Q. And do you know whether Mr. Heggie was</p> <p>7 responsible for ensuring alternate site's</p> <p>8 compliance with state and federal Medicare or</p> <p>9 Medicaid --</p> <p>10 MS. TABACCHI: Object --</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. -- statutes, regulations, rules?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I -- I don't know the</p> <p>15 answer to that. I -- I -- he didn't report to</p> <p>16 me.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Were you responsible within home</p> <p>19 infusion for compliance with state and federal</p> <p>20 Medicaid and Medicare statutes, rules, and</p> <p>21 regulations?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 592</p> <p>1 THE WITNESS: No. I was manager of 2 reimbursement services. We were in charge of 3 claims processing. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Okay. With regard to claims 6 processing, were you responsible for ensuring 7 compliance with Medicaid or Medicare statutes, 8 regulations, or rules concerning reimbursement? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: Well, I -- I felt I was 11 responsible for ensuring that we followed payors' 12 requirements for submitting claims. 13 BY MS. ST. PETER-GRIFFITH: 14 Q. And does that include Medicaid and 15 Medicare? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: Yes. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Did you have any other compliance 20 responsibilities within home infusion? 21 A. I was not -- I was not given a title of 22 compliance. I felt, though, that we needed to</p>	<p style="text-align: right;">Page 594</p> <p>1 THE WITNESS: That wouldn't have been 2 an area I would have even been involved with. 3 But not that -- not to my knowledge, no. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Who would -- who would have been 6 responsible for ensuring that the business model 7 for home infusion complied -- complied with state 8 and federal Medicare and Medicaid statutes, 9 regulations, and rules? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: Well, that would have 12 been the people running the business, as well as 13 the contracting area. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Okay. And who -- who in particular? 16 A. During what time period? 17 Q. During any time period that you were 18 within home infusion. Who was responsible for 19 ensuring that compliance? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: On -- on consignment? 22 BY MS. ST. PETER-GRIFFITH:</p>
<p style="text-align: right;">Page 593</p> <p>1 submit claims correctly. 2 Q. And how did you ensure that you were 3 submitting claims within home infusion -- how did 4 you ensure that the home infusion unit that you 5 managed was submitting claims in compliance with 6 state and federal Medicare or Medicare statutes, 7 regulations, and rules? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: The Medicare program used 10 contractors. And the contractors would issue 11 bulletins. There would be training sessions, and 12 we would attend the training sessions. We'd read 13 the bulletins. We'd talk to the ombudsmen at the 14 Medicare carriers. And we -- we would try and 15 follow their requirements. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Did anyone, to your knowledge, ever 18 question whether these consignment arrangements 19 within home infusion with the consignment 20 partners complied with state and federal Medicaid 21 and Medicare statutes, regulations, and rules? 22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 595</p> <p>1 Q. Mm-hmm -- yes. 2 A. Well, I don't -- I don't specifically 3 remember the contracting. But I think it was -- 4 there were different managers of the contracting 5 area and different general managers of home 6 infusion. 7 Q. Okay. Who were they that you -- that 8 you can recall? 9 A. Well, Bill Dempsey, Mike Sellers, Dave 10 Brincks, Mark Gorman. That's all I remember. 11 Q. Okay. Did anyone ever come to you with 12 a concern about how your reimbursement personnel 13 were billing Medicaid and Medicare for claims on 14 behalf of consignment partners? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: No, not to my knowledge. 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Did anyone ever raise with you concerns 19 about your reimbursement department's billing and 20 whether it complied with the False Claims Act and 21 the anti-kickback statute? 22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 596</p> <p>1 THE WITNESS: No. Not to my knowledge.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Whose responsibility was it to ensure</p> <p>4 that billing by your department complied with</p> <p>5 state and federal False Claims Act and the anti-</p> <p>6 kickback statute?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I don't know. Wasn't my</p> <p>9 responsibility.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. I'm sorry. It wasn't what?</p> <p>12 A. I did not have the responsibility of</p> <p>13 ensuring that we complied with anti-kickback.</p> <p>14 Q. Do you know who did?</p> <p>15 A. No.</p> <p>16 Q. Did anybody?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I -- I can't even answer</p> <p>19 that question. I don't know.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Well, you'd agree with me that</p> <p>22 complying with the anti-kickback statute is a</p>	<p style="text-align: right;">Page 598</p> <p>1 THE WITNESS: Okay.</p> <p>2 MS. ST. PETER-GRIFFITH: Can we mark</p> <p>3 that as Exhibit 2?</p> <p>4 (Exhibit Tobiason 002 marked.)</p> <p>5 MS. ST. PETER-GRIFFITH: And, Tina,</p> <p>6 while she's reviewing that, this is one document</p> <p>7 that I only have one copy of. So this is going</p> <p>8 to be the next one. I wanted you to see that</p> <p>9 before I gave it to her.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Ma'am, do you recognize the document</p> <p>12 that's been marked as Exhibit 1?</p> <p>13 A. No.</p> <p>14 Q. Have you ever seen it before?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Do you remember anyone ever raising</p> <p>17 with you a concern about needing to advise</p> <p>18 Abbott's home infusion consignment partners</p> <p>19 Abbott's view of or intent concerning its home</p> <p>20 infusion services program?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: No, not that I recall.</p>
<p style="text-align: right;">Page 597</p> <p>1 pretty significant thing for Abbott Hospital</p> <p>2 Products division, isn't it?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: I believe complying with</p> <p>5 all federal regulations is important.</p> <p>6 MS. ST. PETER-GRIFFITH: If we can mark</p> <p>7 this as -- I'm sorry. Ms. Tobiason, actually,</p> <p>8 could you give that to Ms. Tabacchi. We'll mark</p> <p>9 this --</p> <p>10 THE WITNESS: Oh, sure.</p> <p>11 MS. ST. PETER-GRIFFITH: We'll mark</p> <p>12 this as Tobiason Exhibit 1, please.</p> <p>13 MS. TABACCHI: Exhibit?</p> <p>14 MS. ST. PETER-GRIFFITH: 1.</p> <p>15 MS. TABACCHI: 1.</p> <p>16 (Exhibit Tobiason 001 marked.)</p> <p>17 MS. ST. PETER-GRIFFITH: And can we</p> <p>18 mark this as Exhibit 2 as well?</p> <p>19 THE WITNESS: Should I give this to</p> <p>20 her?</p> <p>21 MS. ST. PETER-GRIFFITH: No, that's for</p> <p>22 you to review.</p>	<p style="text-align: right;">Page 599</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Do you remember anyone ever telling you</p> <p>3 or advising you that Abbott Home Infusion</p> <p>4 consignment partners canceled contracts because</p> <p>5 of concerns about the legality of the consignment</p> <p>6 arrangements?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 I'll also caution the witness not to</p> <p>9 reveal the substance of any communications with</p> <p>10 counsel.</p> <p>11 THE WITNESS: No, not that I recall.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Do you recall an Abbott Home Infusion</p> <p>14 consignment partner named Ingalls Home Care?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall whether it was a</p> <p>17 relatively large account?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: Oh.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. And let me clarify. By large, I mean</p> <p>22 billings of 800,000 to over a million dollars a</p>

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<p style="text-align: right;">Page 600</p> <p>1 year.</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: No, I don't actually</p> <p>4 remember what their billings were. I thought</p> <p>5 they were -- if I would hazard a guess, I would</p> <p>6 think they were in the small to medium.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Okay. Relative to other consignment --</p> <p>9 A. Yes.</p> <p>10 Q. -- partners?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you recall what the contract</p> <p>13 term was with Ingalls Home Care?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I do not remember their</p> <p>16 specific contract, no.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Do you recall Ingalls Home Care</p> <p>19 canceling its consignment arrangement two years</p> <p>20 into the five-year contract it had with Abbott</p> <p>21 Home Infusion?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 602</p> <p>1 look at the second sentence in the first</p> <p>2 paragraph. Do you see it begins, "Abbott has</p> <p>3 invested significant funds and resources"? The</p> <p>4 first paragraph at the top, second sentence.</p> <p>5 A. Oh, yeah. Okay. Yes.</p> <p>6 Q. Do you know what kind of investment</p> <p>7 Abbott Home Infusion Services made to develop its</p> <p>8 home infusion services program?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: Well, I know that we did</p> <p>11 have a business and that obviously every business</p> <p>12 requires resources and funds. And I know that on</p> <p>13 our reimbursement side, we had a number of people</p> <p>14 involved in reimbursement services.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Okay. Anything else?</p> <p>17 A. I know we had pharmacy people, nurses.</p> <p>18 There were headcount involved.</p> <p>19 Q. Okay. Anything else?</p> <p>20 A. But I'm not -- I don't know</p> <p>21 specifically what they're referring to here. I</p> <p>22 can only just assume it's -- there was</p>
<p style="text-align: right;">Page 601</p> <p>1 Q. You don't remember anything about that?</p> <p>2 A. No.</p> <p>3 Q. What do you remember about the Ingalls</p> <p>4 contract?</p> <p>5 A. Not much, no. I -- all I know is that</p> <p>6 we did reimbursement services, I believe, to the</p> <p>7 best of my recollection, for Ingalls. I don't</p> <p>8 remember them canceling their contract, no.</p> <p>9 Q. Would that have been something that you</p> <p>10 would have learned about if they'd canceled their</p> <p>11 contract?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Well, because I was</p> <p>14 responsible for reimbursement services and making</p> <p>15 sure that we had appropriate headcount, you know,</p> <p>16 people to handle the clients, I may have learned</p> <p>17 that we no longer had Ingalls and that we may</p> <p>18 have shifted some headcount to other accounts.</p> <p>19 But I don't -- I don't specifically</p> <p>20 recall it at all about Ingalls.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Ma'am, if you could take Exhibit 1 and</p>	<p style="text-align: right;">Page 603</p> <p>1 significant resources.</p> <p>2 Q. Do you have any idea why this</p> <p>3 particular flyer would be sent out to Abbott Home</p> <p>4 Infusion consignment partners?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Was this sent to all of</p> <p>7 them? I don't know.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Okay.</p> <p>10 A. I'm asking you. I don't know who this</p> <p>11 went to. I don't even know if this went out to</p> <p>12 anybody.</p> <p>13 Q. Okay. Well, do you know why Abbott</p> <p>14 Home Infusion Services would draft this document?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Would you expect that you would have</p> <p>19 been consulted on the content of this document?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. This appears to be a business decision</p>

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<p style="text-align: right;">Page 604</p> <p>1 on how we structured our contracts. This would 2 have been a contracting issue. 3 Q. Okay. 4 A. I was not doing contracts; I was doing 5 reimbursement services. 6 Q. If you read the third paragraph, it 7 says, "In a few instances, Abbott has been asked 8 whether this percentage-of-collections approach 9 is consistent with Medicare laws and safe 10 harbors." And then it says, "Abbott believes this 11 percentage approach is sound under the law." 12 Do you see that? It's in the third 13 paragraph, first two sentences. 14 A. Yes. 15 Q. Okay. Do you know -- do you have any 16 understanding or basis for Abbott's belief that 17 the percentage-of-collections approach is sound 18 under state and federal Medicare and Medicaid 19 laws? 20 MS. TABACCHI: Object to the form. 21 I will also caution the witness not to 22 reveal the substance of any communications with</p>	<p style="text-align: right;">Page 606</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Who would you -- who within the 3 contracting department based upon your 4 familiarity with the home infusion business unit 5 would have been responsible for ensuring that the 6 percentage- of-collections approach for the home 7 infusion consignment contracts complied with 8 Medicare and Medicaid laws and the safe harbor 9 regulations? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: That requires speculation 12 on my part on what they -- what their 13 responsibilities were. But I would think it 14 would be contracting and -- and the management of 15 home infusion services. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Now, would that be Mr. Dempsey, Mr. 18 Sellers, Mr. Brincks, and Mr. Gorman? 19 A. I can't speak for them, but I would 20 think so, yes. 21 Q. Anyone else? 22 A. There -- there possibly -- I mean,</p>
<p style="text-align: right;">Page 605</p> <p>1 counsel. 2 THE WITNESS: Repeat the question 3 again. 4 MS. ST. PETER-GRIFFITH: Can you read 5 it back, please? 6 (Record read.) 7 THE WITNESS: That would be speculation 8 on my part. I'm -- I wasn't involved in the 9 decision. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Did you consult with any attorneys 12 concerning whether or not the consignment 13 arrangements run afoul with Medicare safe harbor 14 laws? 15 MS. TABACCHI: Object to the form. 16 And the witness may answer the question 17 "yes" or "no" or "I don't know," "I don't 18 recall." But please do not reveal the substance 19 of any communications with counsel, if there were 20 any. 21 THE WITNESS: That would have been a 22 contracting issue. I didn't do contracting.</p>	<p style="text-align: right;">Page 607</p> <p>1 there could have been legal involved. I -- I 2 really don't know. 3 Q. Did you hear of or learn of any home 4 infusion clients canceling their contracts 5 because of concerns about the legality of the 6 consignment relationship with Abbott Home 7 Infusion? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I -- I think you've asked 10 that and I'd said no. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. Ma'am, I'd like to show you what's been 13 marked as Tobiason Exhibit 2. And I'll represent 14 to you that this is a page from a home infusion 15 consignment contract. 16 A. Hmm. 17 Q. And the language I'm going to ask you 18 to focus on is the Medicare Disclosure Agreement. 19 Ma'am, are you familiar with the Abbott 20 Home Infusion consignment contracts? 21 MS. TABACCHI: Object to the form. 22 BY MS. ST. PETER-GRIFFITH:</p>

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<p style="text-align: right;">Page 608</p> <p>1 Q. Just in general.</p> <p>2 A. Well, in -- in general, I believe I may</p> <p>3 have read some of them.</p> <p>4 Q. Okay. Were you aware of this</p> <p>5 particular Medicare disclosure agreement</p> <p>6 provision within those contracts?</p> <p>7 A. I don't recollect reading this, no.</p> <p>8 Q. To your knowledge, did Abbott Home</p> <p>9 Infusion ever consider putting in a disclosure</p> <p>10 requirement whereby Abbott Home Infusion partners</p> <p>11 needed to disclose to payors that they were</p> <p>12 receiving their product on a consignment basis?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: Repeat that question.</p> <p>15 MS. ST. PETER-GRIFFITH: Sure.</p> <p>16 Can you read it back, please?</p> <p>17 (Record read.)</p> <p>18 THE WITNESS: No, not that I can</p> <p>19 recall. But that wouldn't have been an area I</p> <p>20 was involved with.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Okay. Why wouldn't that have been an</p>	<p style="text-align: right;">Page 610</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Well, in terms of making the</p> <p>3 disclosure, who would make the disclosure, the</p> <p>4 individuals responsible for submitting the claims</p> <p>5 or the actual partners themselves?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: You know, I'm not an</p> <p>8 attorney. So for me to interpret this would be</p> <p>9 difficult. But it looks like the customer's</p> <p>10 responsible.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Under this particular provision?</p> <p>13 A. Yeah. But, as I said, I'm not an</p> <p>14 attorney; I'm not -- I'm not totally familiar</p> <p>15 with this statute.</p> <p>16 Q. Well, in terms of submitting claims,</p> <p>17 were you aware of customers who interacted with</p> <p>18 Medicaid and Medicare officials beyond the</p> <p>19 interaction that your reimbursement services</p> <p>20 department had --</p> <p>21 MS. TABACCHI: Object --</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>
<p style="text-align: right;">Page 609</p> <p>1 area that you were involved with? Wouldn't it</p> <p>2 impact reimbursement?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: I was manager of</p> <p>5 reimbursement services. We submitted claims for</p> <p>6 products and services dispensed to patients. I -</p> <p>7 - I view that as -- as an inventory and</p> <p>8 contracting issue.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Okay. You review the disclosure</p> <p>11 requirements as an inventory and contracting</p> <p>12 issue?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I have no opinion about</p> <p>15 that. I don't know where it fits in.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Okay. Well, is it possible that it</p> <p>18 could have fit into reimbursement compliance?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I really -- I don't -- I</p> <p>21 don't know how that applies to -- I mean, for us</p> <p>22 submitting a claim on behalf of a customer, no.</p>	<p style="text-align: right;">Page 611</p> <p>1 Q. -- if they contracted for reimbursement</p> <p>2 services?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: I think you need to be</p> <p>5 more specific. I don't even understand the</p> <p>6 question.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Okay. Let me try it this way. Your</p> <p>9 reimbursement department interacted with Medicare</p> <p>10 and Medicaid for the submission of claims if the</p> <p>11 consignment partner contracted for reimbursement</p> <p>12 services, correct?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: Yes. We submitted</p> <p>15 claims, yes. We submitted HCFA 1500 claims.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Okay. Would it be your expectation</p> <p>18 that if disclosures needed to be made pursuant to</p> <p>19 state or federal law that those disclosures would</p> <p>20 be made at the time of the submission of the</p> <p>21 claims or at another time?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 612</p> <p>1 THE WITNESS: The claim submittal</p> <p>2 process requires you to put down, you know, what</p> <p>3 the patient received, the patient information,</p> <p>4 the diagnosis claims, and -- and the -- the</p> <p>5 agreed-upon -- follow the payor's requirements.</p> <p>6 If it was a per diem, we submitted a per diem,</p> <p>7 whatever. I don't really understand where you</p> <p>8 would even -- what you would be disclosing.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Well, how about disclosing that they</p> <p>11 were getting the product for free --</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. -- on a consignment basis?</p> <p>15 A. Well, consignment doesn't mean that</p> <p>16 products are given for free.</p> <p>17 Q. Well, how much are they charged for the</p> <p>18 consignment products then? How much were the</p> <p>19 home infusion partners charged for the consigned</p> <p>20 products?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: That wasn't my area.</p>	<p style="text-align: right;">Page 614</p> <p>1 Q. Do you know when those reports needed</p> <p>2 to be made to Medicare or Medicaid?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Could it have been at the time that the</p> <p>7 claims were submitted?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I don't know. It would</p> <p>10 require a legal interpretation.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Well, your -- your staff was submitting</p> <p>13 claims, right?</p> <p>14 A. Correct.</p> <p>15 Q. Do you recall your staff ever advising</p> <p>16 any state or federal official that the</p> <p>17 consignment partner on whose behalf you were</p> <p>18 submitting claims received a discount, rebate, or</p> <p>19 other reduction?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>
<p style="text-align: right;">Page 613</p> <p>1 That would be the contracting, what the contract</p> <p>2 said.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Were you aware that the contracts with</p> <p>5 the consignment partners provided prices for the</p> <p>6 consigned products?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: My understanding is, to</p> <p>9 the best of my knowledge, even though I didn't</p> <p>10 handle contracting, was that partners, consigned</p> <p>11 partners, customers, paid for the consigned</p> <p>12 inventory that was actually dispensed to the</p> <p>13 patient.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Okay. Let's look at the last sentence</p> <p>16 of this particular provision. It says, "The</p> <p>17 customer shall report, and ensure that its</p> <p>18 Participants shall report, as the case may be,</p> <p>19 any discounts, rebates or other reductions in</p> <p>20 price."</p> <p>21 Do you see that?</p> <p>22 A. Mm-hmm.</p>	<p style="text-align: right;">Page 615</p> <p>1 Q. Why not?</p> <p>2 A. But then I wouldn't know. We followed</p> <p>3 -- if a customer -- customer established the</p> <p>4 pricing, it was the customer's responsibility.</p> <p>5 And we followed what the customer wanted us to</p> <p>6 do.</p> <p>7 Q. Did Abbott help in establishing the</p> <p>8 customer pricing, to your knowledge?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: It was the customer's</p> <p>11 responsibility to tell us what the pricing was.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. But that's not my question. Did Abbott</p> <p>14 assist in establishing the pricing?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. If the client wanted help, for example?</p> <p>18 A. Not to my knowledge, no.</p> <p>19 Q. So to your knowledge, no discount,</p> <p>20 rebate, or other reduction in price was ever</p> <p>21 reported by your reimbursement staff on behalf of</p> <p>22 a consignment partner?</p>

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<p style="text-align: right;">Page 616</p> <p>1 MS. TABACCHI: Object to the form.  2 THE WITNESS: It could have been. I --  3 I just am not aware of any.  4 BY MS. ST. PETER-GRIFFITH:  5 Q. Well, if it was, would you have been  6 aware of the circumstances under which it needed  7 to be reported?  8 MS. TABACCHI: Object to the form.  9 THE WITNESS: I -- not necessarily. I  10 just don't -- I don't even --  11 BY MS. ST. PETER-GRIFFITH:  12 Q. Well, you were the manager of  13 reimbursement services, weren't you?  14 A. Yes, I was.  15 Q. Well, if you have a staff member who is  16 reporting on behalf of a consignment partner a  17 rebate or discount or other reduction, is that a  18 practice that you would want to know about?  19 MS. TABACCHI: Object to the form.  20 THE WITNESS: We followed our  21 customer's instructions.  22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 618</p> <p>1 you'd have to be more specific.  2 BY MS. ST. PETER-GRIFFITH:  3 Q. Practices in terms of what they  4 directed for claims re -- for claims submission  5 to third-party payors, including Medicare and  6 Medicaid.  7 MS. TABACCHI: Object to the form.  8 THE WITNESS: Well, customers had  9 different contracts with payors. So there were  10 different -- differences involved in claims  11 submission because they may have different  12 contracts.  13 BY MS. ST. PETER-GRIFFITH:  14 Q. Okay. Well, what about for Medicare or  15 Medicaid? Can we agree that there really wasn't  16 that big of a variation in their practice -- in  17 their requirements for reporting to Medicaid or  18 Medicare?  19 A. Medicare was pretty much a national  20 program even though there were four carriers, so  21 there could have been differences.  22 Medicaid was each state had their own</p>
<p style="text-align: right;">Page 617</p> <p>1 Q. Even if those instructions may have  2 meant that your customer was violating state and  3 federal law?  4 MS. TABACCHI: Object to the form.  5 THE WITNESS: I -- I -- violating? I -  6 - I don't -- I would -- I wouldn't assume that  7 they were violating any state and federal laws.  8 BY MS. ST. PETER-GRIFFITH:  9 Q. Why would you make that assumption?  10 MS. TABACCHI: Object to the form.  11 THE WITNESS: I think that's  12 speculation on my part. I don't know what the  13 customer's relationship was with their legal  14 counsel or -- I mean, I -- I just can't say that  15 customers -- I would assume that customers -- a  16 lot of these were hospitals. They were very --  17 they understood federal and state laws.  18 BY MS. ST. PETER-GRIFFITH:  19 Q. Well, did you have different varying  20 practices from customer to customer?  21 MS. TABACCHI: Object to the form.  22 THE WITNESS: In terms of practices,</p>	<p style="text-align: right;">Page 619</p> <p>1 requirements. I'm not familiar with every  2 state's requirement.  3 Q. Who was within your department?  4 A. That would have been each reimbursement  5 specialist who handled the state. They would  6 have known what the requirements were for that  7 state.  8 Q. Okay. And who taught them those  9 requirements?  10 MS. TABACCHI: Object to the form.  11 THE WITNESS: Well, in many cases, the  12 specialist was -- was responsible for working  13 with the Medicaid and Medicares to determine what  14 the -- what the rules and regulations were. And  15 they had supervisors.  16 BY MS. ST. PETER-GRIFFITH:  17 Q. In terms of who ultimately was  18 responsible for ensuring that the claims  19 submission by the home infusion staff complied  20 with state and federal Medicare and Medicaid  21 laws, who bore that responsibility? Was it the  22 client, the home infusion consignment partner, or</p>

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<p style="text-align: right;">Page 620</p> <p>1 was it your department?</p> <p>2 A. I believe it was both.</p> <p>3 Q. Okay. Explain that, please.</p> <p>4 A. Well, many cases clients obtained</p> <p>5 information, and they may have had certain</p> <p>6 policies or procedures that they wanted us to</p> <p>7 follow in terms of claims submission and also</p> <p>8 that we tried to follow what the Medicare,</p> <p>9 Medicaid, and private payors asked us to do in</p> <p>10 terms of submitting claims to -- for</p> <p>11 adjudication.</p> <p>12 Q. Okay. So who bore the responsibility</p> <p>13 of ensuring that what was being done in terms of</p> <p>14 your staff's claims submission complied with</p> <p>15 state and federal law?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: Well, I believe it was</p> <p>18 both Abbott's and the customers'.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. So if Abbott had a consignment partner</p> <p>21 who didn't want to disclose a discount, rebate,</p> <p>22 or other reduction, but they needed to pursuant</p>	<p style="text-align: right;">Page 622</p> <p>1 Q. Ma'am, can you --</p> <p>2 MS. TABACCHI: Your question assumes</p> <p>3 that there were certain obligations, and that I</p> <p>4 think that, you know, is a matter that is not</p> <p>5 necessarily established.</p> <p>6 MS. ST. PETER-GRIFFITH: Can you read</p> <p>7 back the last question, please?</p> <p>8 (Record read.)</p> <p>9 MS. TABACCHI: Same objection. And I</p> <p>10 also object to the form.</p> <p>11 THE WITNESS: Well, I think you're</p> <p>12 asking me whether somebody didn't disclose it.</p> <p>13 And I'm not aware of any instance where anybody</p> <p>14 didn't follow the rules. So I don't understand</p> <p>15 the -- I really don't understand the question.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Okay. Let me ask you this. If</p> <p>18 pursuant to law Abbott's home infusion partner</p> <p>19 was required to report that they were receiving</p> <p>20 goods on a consignment basis, who was responsible</p> <p>21 for ensuring that that was reported to Medicaid</p> <p>22 or Medicare?</p>
<p style="text-align: right;">Page 621</p> <p>1 to law, whose responsibility was it to ensure</p> <p>2 that that discount, rebate, or reduction was</p> <p>3 reported to Medicare or Medicaid?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 Can I object to this line of</p> <p>6 questioning as calling for a lot of legal</p> <p>7 conclusions and legal interpretation and</p> <p>8 hypotheticals and ask --</p> <p>9 MS. ST. PETER-GRIFFITH: She's -- she's</p> <p>10 responsible for the division that submitted these</p> <p>11 claims. I'm just asking her whether they</p> <p>12 complied with the law.</p> <p>13 MS. TABACCHI: She's answered your</p> <p>14 questions, I think been very patient about it.</p> <p>15 But the questions are hypothetical questions that</p> <p>16 call for legal conclusions and are not factual --</p> <p>17 MS. ST. PETER-GRIFFITH: They're --</p> <p>18 MS. TABACCHI: -- in nature.</p> <p>19 MS. ST. PETER-GRIFFITH: They are not -</p> <p>20 - they are not calling for legal conclusions, and</p> <p>21 they are very factual in nature.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 623</p> <p>1 A. I --</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I think you'd have to ask</p> <p>4 the client. I'm sure they had discussions with</p> <p>5 their legal department.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Did you just then follow the client's</p> <p>8 instructions, whatever they were, with regard to</p> <p>9 whether or not the consignment relationship</p> <p>10 needed to be disclosed to Medicare or Medicaid?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I don't believe that ever</p> <p>13 came up.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Do you know why it never came up?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: That's speculation. I</p> <p>18 have no idea.</p> <p>19 MS. TABACCHI: Are you moving to a new</p> <p>20 topic, Ann?</p> <p>21 MS. ST. PETER-GRIFFITH: Yeah.</p> <p>22 MS. TABACCHI: Is it -- can we take a</p>

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<p style="text-align: right;">Page 624</p> <p>1 five-minute break?</p> <p>2 MS. ST. PETER-GRIFFITH: Sure. Yeah,</p> <p>3 that's fine.</p> <p>4 THE VIDEOGRAPHER: We are off the</p> <p>5 record at 10:11 a.m.</p> <p>6 (Recess taken.)</p> <p>7 MS. ST. PETER-GRIFFITH: Would you mark</p> <p>8 this as the next exhibit, please?</p> <p>9 (Exhibit Tobiason 003 marked.)</p> <p>10 (Off-the-record discussion.)</p> <p>11 THE VIDEOGRAPHER: We are back on the</p> <p>12 record at 10:27 a.m.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Ms. Tobiason, you've -- I've handed to</p> <p>15 you what's been marked as Tobiason Exhibit 3. Do</p> <p>16 you recognize this document?</p> <p>17 A. Yes.</p> <p>18 Q. And what is it?</p> <p>19 A. It's my CV.</p> <p>20 Q. Okay. Do you know what this particular</p> <p>21 CV was used for in home infusion?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 626</p> <p>1 of Abbott during your tenure within home</p> <p>2 infusion?</p> <p>3 A. We were -- in my tenure in home</p> <p>4 infusion -- and I -- this dates back -- and I</p> <p>5 don't know if this is -- it's the 1980s, I</p> <p>6 believe -- we worked on the catastrophic health</p> <p>7 care plan.</p> <p>8 Q. And do you recall any other legislative</p> <p>9 initiatives that you worked on, either state or</p> <p>10 federal, during your tenure within home infusion,</p> <p>11 either with trade groups or with Abbott's</p> <p>12 government relations department?</p> <p>13 A. I think we did work on coverage</p> <p>14 policies.</p> <p>15 Q. Okay. What are coverage policies?</p> <p>16 A. Coverage policies are -- there's</p> <p>17 national and local coverage policies that lay out</p> <p>18 the -- how procedures, devices, drugs are</p> <p>19 actually covered, the medical necessity, if</p> <p>20 there's medical necessity requirements.</p> <p>21 Q. Did you work on coverage policies that</p> <p>22 transcended the home infusion area?</p>
<p style="text-align: right;">Page 625</p> <p>1 THE WITNESS: Not that I recall. I</p> <p>2 don't even remember the time frame this was</p> <p>3 applicable.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Okay. Do you see in the first</p> <p>6 paragraph, the third sentence: "Responsibilities</p> <p>7 include reimbursement operations, development of</p> <p>8 reimbursement strategy and active lobbying of</p> <p>9 government and private payors"?</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. I believe in the last deposition round,</p> <p>13 we covered your responsibilities for</p> <p>14 reimbursement operations. What I'd like to ask</p> <p>15 you, ma'am, is what were your responsibilities</p> <p>16 with regard to lobbying of the government?</p> <p>17 A. Well, I would have said my lobbying of</p> <p>18 the government was primarily done through our</p> <p>19 trade association and the National Alliance for</p> <p>20 Infusion Therapy.</p> <p>21 Q. Okay. And did you do any other</p> <p>22 lobbying or consulting with lobbyists on behalf</p>	<p style="text-align: right;">Page 627</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: Not that I recall.</p> <p>3 During that -- during what time period?</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. During your tenure with home infusion.</p> <p>6 A. Not that I recall.</p> <p>7 Q. Okay. Do you recall when you were</p> <p>8 within home infusion any other lobbying</p> <p>9 initiatives that you were involved with?</p> <p>10 A. My best recollection would be that it</p> <p>11 mostly involved coverage and the medical</p> <p>12 necessity requirements.</p> <p>13 Q. And at your testimony last time, or</p> <p>14 during -- in your testimony last time, you</p> <p>15 indicated that you have no recollection of the</p> <p>16 Medicare working group. Since your last</p> <p>17 deposition, has -- has your memory at all been</p> <p>18 refreshed about the Medicare working group?</p> <p>19 A. To be honest, I have a vague</p> <p>20 recollection now of there was a group.</p> <p>21 Q. Okay. And what's your recollection?</p> <p>22 A. That I believe that a corporate -- the</p>

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<p style="text-align: right;">Page 628</p> <p>1 corporate group -- I don't even remember who was  2 in charge of it -- had had a Medicare -- they had  3 a Medicare working group or whatever. And --  4 Q. And did you work -- I'm sorry. Go  5 ahead.  6 A. And I don't remember that much of the  7 details about it. I just vaguely remember that  8 there was a gentleman who convened a group.  9 Q. And were you a member of that group?  10 A. I -- yes, I believe I was.  11 Q. And what was your involvement with that  12 group that you can recall?  13 A. I think it was very limited. I may  14 have attended a few meetings, but I don't even  15 remember the substance of them.  16 Q. And do you recall receiving any  17 materials concerning the Medicare working group?  18 A. No.  19 Q. If you did receive materials concerning  20 the Medicare working group, what -- do you recall  21 what you may have done with them?  22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 630</p> <p>1 A. No.  2 Q. Okay. Did you have any responsibility  3 for handling for HPD or home infusion the payout  4 of reimbursement of Medicaid claims --  5 MS. TABACCHI: Object to the form.  6 BY MS. ST. PETER-GRIFFITH:  7 Q. -- as referenced here?  8 A. I -- I believe at this point I had a  9 very limited role.  10 Q. Were you still within -- were you still  11 the manager of reimbursement services in '92?  12 A. Yes, I was.  13 Q. Okay. And what was your -- what was  14 your role with regard to the GVR system within  15 HPD?  16 A. I don't even know what the GVR system  17 is.  18 Q. Okay. What role is it -- what limited  19 role is it that you recall that you just  20 referenced?  21 A. It was a very limited role for a very  22 short time payment -- time period where if the</p>
<p style="text-align: right;">Page 629</p> <p>1 THE WITNESS: No, I don't -- I don't  2 recall what I did with them.  3 MS. ST. PETER-GRIFFITH: Ma'am, I'm  4 going to ask this next deposition exhibit be  5 marked, please, as -- I believe we're up to 4.  6 (Exhibit Tobiason 004 marked.)  7 BY MS. ST. PETER-GRIFFITH:  8 Q. Ma'am, do you recognize this document?  9 A. No.  10 Q. Do you recall ever seeing it before?  11 A. No.  12 Q. Do you see that you're referenced in  13 the third paragraph?  14 A. I do.  15 Q. Okay. And the sentence reads:  16 "Currently Virginia" -- or "Ginny Tobiason  17 handles payout for reimbursement of Medicaid  18 claims."  19 Do you see that?  20 A. Yeah, I do.  21 Q. Do you understand what that sentence  22 is?</p>	<p style="text-align: right;">Page 631</p> <p>1 state sent us, you know, some kind of report for  2 payment -- which I didn't even do the payment  3 side of it -- was that they would ask me, does  4 this make sense in terms of that it was a --  5 covered by the Medicaid rebate.  6 Like, for example, if -- if it was a  7 product that was -- would have been covered under  8 the agreement -- for example, sometimes we got  9 claims for anesthesia products, which certainly  10 weren't administered in outpatient setting. So I  11 would look at the drug and say -- or the claim or  12 whatever they put and say, well, I don't think  13 that fits, so you need to go back and perhaps ask  14 them for more information.  15 Q. And would your responsibilities be  16 limited to the home infusion area, or would they  17 transcend to the Hospital Products division or  18 were they alt site?  19 MS. TABACCHI: Object to the form.  20 THE WITNESS: Well, at this point they  21 really -- I -- because of my nursing background,  22 they would ask could I look at the products.</p>

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1 BY MS. ST. PETER-GRIFFITH:  
 2 Q. Okay. So you -- you -- so it would be  
 3 you'd be looking at it for -- within -- in HPD as  
 4 a whole?  
 5 MS. TABACCHI: Object to the form.  
 6 THE WITNESS: Well -- well, they were  
 7 submitted to HPD. So it was for products that we  
 8 agreed that were covered under the Medicaid  
 9 rebate agreement.  
 10 BY MS. ST. PETER-GRIFFITH:  
 11 Q. Okay. And what is your familiarity  
 12 with the Medicaid rebate agreement?  
 13 MS. TABACCHI: Object to the form.  
 14 THE WITNESS: Well, my understanding --  
 15 well, it's changed.  
 16 BY MS. ST. PETER-GRIFFITH:  
 17 Q. Okay. What --  
 18 A. During what time period?  
 19 Q. During this time period, during '92.  
 20 A. Well, that -- that it was the product  
 21 sold to the retail pharmacy class of trade. So  
 22 it would have been products administered outside

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1 the four walls of the hospital and that we had to  
 2 pay some kind of rebate amount, which varied --  
 3 and I don't really remember anything about the  
 4 amounts -- and -- and that they would send us  
 5 reports.  
 6 Q. Who is "they"?  
 7 A. The states.  
 8 Q. Okay. And is this indicating that you  
 9 had responsibility for reviewing the reports from  
 10 the states?  
 11 MS. TABACCHI: Object to the form.  
 12 THE WITNESS: Well, this says "handles  
 13 payout," but I'm telling you what I -- what I  
 14 did.  
 15 BY MS. ST. PETER-GRIFFITH:  
 16 Q. Okay. And why was it that you were  
 17 tasked to do that responsibility?  
 18 MS. TABACCHI: Object to the form.  
 19 THE WITNESS: Well, I -- I think it was  
 20 because my nursing background, and they needed  
 21 somebody who had some kind of knowledge of  
 22 products used in -- in outside the four walls of

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1 the hospital.  
 2 BY MS. ST. PETER-GRIFFITH:  
 3 Q. Did you have any other responsibilities  
 4 during your tenure as the manager of  
 5 reimbursement services pertaining to Hospital  
 6 Products division or outside of the home infusion  
 7 area?  
 8 MS. TABACCHI: Object to the form.  
 9 THE WITNESS: That's really broad. I -  
 10 - you know, I don't recollect. I remember we  
 11 were so busy just doing reimbursement services  
 12 that that's what I spent the majority of my time  
 13 with.  
 14 BY MS. ST. PETER-GRIFFITH:  
 15 Q. And do you think in this instance they  
 16 just -- they needed someone with a nursing  
 17 background to help out for HPD, and that's why  
 18 you got tasked with the responsibility?  
 19 A. I don't know if they needed somebody  
 20 with nursing; they needed somebody with a medical  
 21 background or had some familiarity with what  
 22 products were used outside the four walls of the

Page 635

1 hospital.  
 2 Q. Can you think of any other reason why  
 3 you were tasked with the responsibility for  
 4 reviewing the rebate reports from the states?  
 5 A. I know that I looked at the products.  
 6 I didn't look at the amounts. I didn't look at  
 7 any of the information on what the payments were.  
 8 I looked at whether the products looked like they  
 9 were administered outside the four walls of the  
 10 hospital.  
 11 Q. Okay. Can you think of any other  
 12 reason why you would be tasked with that  
 13 assignment, though? That's my question.  
 14 A. No.  
 15 MS. ST. PETER-GRIFFITH: Why don't we  
 16 mark this next exhibit. And while we're marking  
 17 it, we can go off the record and take a break  
 18 because Tony needs to change the tape.  
 19 THE VIDEOGRAPHER: We are off the  
 20 record at 10:40 a.m. with the end of Tape No. 1.  
 21 (Brief interruption.)  
 22 (Exhibit Tobiason 005 marked.)

20 (Pages 632 to 635)

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<p style="text-align: right;">Page 636</p> <p>1 THE VIDEOGRAPHER: We are back on the</p> <p>2 record at 10:42 a.m. with the start of Tape No.</p> <p>3 2.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Ma'am, I'm going to primarily ask you</p> <p>6 about the first page. You're free to flip</p> <p>7 through the other pages, but I just want to see</p> <p>8 if you recall receiving this document.</p> <p>9 MR. SISNEROS: Excuse me, Ann. I don't</p> <p>10 think that document has been marked and</p> <p>11 identified for the record.</p> <p>12 MS. ST. PETER-GRIFFITH: I'm sorry.</p> <p>13 The witness has been handed what's been marked as</p> <p>14 Exhibit 5.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Ma'am, do you recall receiving this</p> <p>17 document, or do you recognize this document?</p> <p>18 A. No.</p> <p>19 Q. Okay. Do you see at the -- on the --</p> <p>20 would you agree with me that the top page appears</p> <p>21 to be a fax cover sheet --</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 638</p> <p>1 A. Probably not.</p> <p>2 Q. Okay. How come?</p> <p>3 A. I got a lot of faxes. I mean, I got a</p> <p>4 lot of information. I don't -- I -- I would run</p> <p>5 out of space.</p> <p>6 Q. Okay. What about -- this is dated --</p> <p>7 do you see 3/30/94? Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Down at the bottom.</p> <p>10 A. Mm-hmm.</p> <p>11 Q. Would you retain these documents, a</p> <p>12 document like this, for any particular period of</p> <p>13 time, or would you just throw it away --</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. -- once you've reviewed it?</p> <p>17 A. I -- I don't -- I don't have any idea.</p> <p>18 But I would think it -- I would have tossed it.</p> <p>19 Q. Okay. Do you recall anything else</p> <p>20 about this document at all?</p> <p>21 A. I recall nothing about this document.</p> <p>22 MS. ST. PETER-GRIFFITH: Move on to the</p>
<p style="text-align: right;">Page 637</p> <p>1 Q. -- from Abbott's Washington, D.C.,</p> <p>2 office? Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And at the top, do you see --</p> <p>5 I'm sorry. On the -- on the To lines, do you see</p> <p>6 the first name appears to be G. Tobiason? Do you</p> <p>7 see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any doubt that you received</p> <p>10 this fax at one point in time?</p> <p>11 A. Well, if they -- if they are -- it</p> <p>12 doesn't have a -- I don't know. I assume so,</p> <p>13 yes.</p> <p>14 Q. Okay. Would you have any reason to</p> <p>15 doubt that you didn't receive this fax?</p> <p>16 A. I -- I would --</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I would have no reason to</p> <p>19 doubt it.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Would you have retained a document like</p> <p>22 this within your files?</p>	<p style="text-align: right;">Page 639</p> <p>1 next exhibit, please.</p> <p>2 (Exhibit Tobiason 006 marked.)</p> <p>3 MS. ST. PETER-GRIFFITH: The witness</p> <p>4 has been handed what's been marked as Deposition</p> <p>5 Exhibit 6.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Ma'am, I'm going to ask you to take a</p> <p>8 few minutes and look at this document and see if</p> <p>9 you recognize it.</p> <p>10 A. Okay.</p> <p>11 Q. Do you recognize this document, ma'am?</p> <p>12 A. Don't remember it.</p> <p>13 Q. Do you -- it says at the top -- do you</p> <p>14 see where it says From, and then that's scratched</p> <p>15 out and it says To: Virginia Tobiason?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know whether you generated the</p> <p>18 typewritten portion of this particular memo?</p> <p>19 A. I don't remember this memo, so I don't</p> <p>20 know.</p> <p>21 Q. Okay. Well, do you have any doubts</p> <p>22 that at least a portion of this document is</p>

21 (Pages 636 to 639)

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<p style="text-align: right;">Page 640</p> <p>1 generated by you given the To/From line at the 2 top? 3 A. It's crossed out. I just don't know. 4 Q. Okay. Do you recall an issue arising 5 concerning TAP setting up a reimbursement area to 6 process private insurance claims for Lupron or 7 any discussions with Mr. Sellers concerning such 8 a -- such an issue? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: I don't -- I don't 11 remember discussions on this. I don't. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Do you have any idea why you would be 14 addressing a TAP issue with Mr. Sellers? 15 A. No. 16 MS. ST. PETER-GRIFFITH: Can you mark 17 the next exhibit, please? 18 (Exhibit Tobiason 007 marked.) 19 MS. ST. PETER-GRIFFITH: Let the record 20 reflect that the witness has been handed a 21 document that's been marked as Deposition Exhibit 22 7.</p>	<p style="text-align: right;">Page 642</p> <p>1 A. I -- I don't recall. 2 Q. Okay. Is it possible that you could 3 have, but you just don't recall? 4 THE WITNESS: Oh, it's pos -- 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: Sorry. It's possible I 7 could have, and I -- I may not have. I just 8 don't know. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Do you have any recollection at all of 11 working on Medicare reform in late '96 or early 12 '97? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: I think Medicare reform 15 is pretty broad. I -- I just don't know if there 16 were specifics. No, I don't remember it. 17 MS. ST. PETER-GRIFFITH: Mark the next 18 exhibit, please. 19 (Exhibit Tobiason 008 marked.) 20 MS. ST. PETER-GRIFFITH: Let the record 21 reflect the witness has been handed what's been 22 marked as Tobiason Exhibit 8.</p>
<p style="text-align: right;">Page 641</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Ma'am, do you recognize this document? 3 A. No. 4 Q. Do you recall attending a meeting on or 5 about 11/25/96 concerning Medicare reform? 6 A. No. 7 Q. Do you have any doubts that you 8 received this document as one of the addressees 9 on the To line? 10 A. I would assume I received it. 11 Q. Who is Mr. Miller? 12 A. Jim Miller was corporate development. 13 Q. And what is corporate development? 14 A. Well, they were a corporate group that 15 I -- I believe just did certain projects. 16 Q. Okay. Do you recall working on any 17 projects concerning Medicare reform with Mr. 18 Miller? 19 A. No. 20 Q. Do you recall working on a Medicare 21 reform or any issues concerning Medicare reform 22 with any of the addressees on this list?</p>	<p style="text-align: right;">Page 643</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Ma'am, do you recognize this document? 3 A. No. 4 Q. Does it help refresh your recollection 5 as to whether you might have been a participant 6 in a meeting concerning Abbott's position on 7 Medicare reform on November 25th, 1996? 8 A. I -- I don't know. I don't remember 9 this at all. 10 Q. Okay. Do you notice your name under 11 HPD? 12 A. Yes. 13 Q. And you see an asterisk there? Do you 14 see an asterisk or a little squiggly after your 15 name? 16 A. I see a squiggly. 17 Q. Okay. 18 A. I don't know. Is there an asterisk 19 there? It looks like it, but -- 20 Q. Well, I don't know that it's -- whether 21 the squiggly is -- is deleting the asterisk or 22 not because the asterisk down at the bottom says,</p>

22 (Pages 640 to 643)

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<p style="text-align: right;">Page 644</p> <p>1 "Not available to attend." Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Does it appear that someone might have</p> <p>4 initially identified you as not available to</p> <p>5 attend and then maybe crossed that off?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: I have no idea. It -- it</p> <p>8 looks like it says I wasn't available to attend.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Okay. But -- or that someone thought</p> <p>11 you weren't available to attend and that maybe</p> <p>12 you did?</p> <p>13 A. I have no idea. I don't know what that</p> <p>14 means.</p> <p>15 Q. Do you have any recollection at all of</p> <p>16 attending such a meeting?</p> <p>17 A. No.</p> <p>18 Q. Okay. Do you have any recollection of</p> <p>19 declining to attend such a meeting or having a</p> <p>20 scheduling conflict?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 646</p> <p>1 policy?</p> <p>2 A. No, I was not involved.</p> <p>3 Q. Okay. Do you see that you are an</p> <p>4 addressee on the To line at the top of this</p> <p>5 interoffice correspondence?</p> <p>6 A. I do.</p> <p>7 Q. Do you have any doubts that you</p> <p>8 received this memo?</p> <p>9 A. I -- I would assume if my name is on it</p> <p>10 I received it.</p> <p>11 Q. Okay. Let me ask you. Is Mr. Miller a</p> <p>12 -- he's a divisional vice president. I assume</p> <p>13 that that's a relatively senior position?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. If Mr. Miller asked you to become</p> <p>18 involved with something, would you anticipate</p> <p>19 that you probably would become involved with</p> <p>20 something?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 645</p> <p>1 MS. ST. PETER-GRIFFITH: Mark this as</p> <p>2 the next exhibit.</p> <p>3 (Exhibit Tobiason 009 marked.)</p> <p>4 MS. ST. PETER-GRIFFITH: The record</p> <p>5 will reflect that the witness is being handed a</p> <p>6 document that's been marked as Tobiason Exhibit</p> <p>7 9.</p> <p>8 Are we up to 9?</p> <p>9 THE REPORTER: Yes.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Ma'am, do you recognize this document?</p> <p>12 A. No.</p> <p>13 Q. Do you recall ever receiving a copy of</p> <p>14 a Healthcare Leadership Council statement of</p> <p>15 policy?</p> <p>16 A. No.</p> <p>17 Q. Do you know what the Healthcare</p> <p>18 Leadership Council is?</p> <p>19 A. Well, I know it's -- it's a group. I</p> <p>20 think it's in Washington.</p> <p>21 Q. Okay. Do you recall having any</p> <p>22 involvement at all with their statement of</p>	<p style="text-align: right;">Page 647</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. But you just have no recollection of</p> <p>3 reviewing a statement of policy on behalf of the</p> <p>4 Healthcare Leadership Council?</p> <p>5 A. I don't remember it at all.</p> <p>6 Q. Do you know why you would be an</p> <p>7 addressee on this interoffice correspondence?</p> <p>8 A. No.</p> <p>9 MS. ST. PETER-GRIFFITH: Move on to the</p> <p>10 next exhibit, please.</p> <p>11 (Exhibit Tobiason 010 marked.)</p> <p>12 MS. ST. PETER-GRIFFITH: Let the record</p> <p>13 reflect that the witness has been handed what's</p> <p>14 been marked as Tobiason Exhibit 10.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Ma'am, do you recognize this document?</p> <p>17 A. No.</p> <p>18 Q. You were an addressee on the To line,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have any doubts that you</p> <p>22 received this document?</p>

23 (Pages 644 to 647)

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<p style="text-align: right;">Page 648</p> <p>1 A. I -- I would assume I received it.</p> <p>2 Q. Who is Mr. Rieger?</p> <p>3 A. Mr. Rieger appears to be a manager in</p> <p>4 strategic planning.</p> <p>5 Q. Do you recall him?</p> <p>6 A. Vaguely. I have a -- I vaguely recall</p> <p>7 that he worked for -- I think he worked for Jim</p> <p>8 Miller.</p> <p>9 Q. Okay. Do you recall working on a</p> <p>10 particular group within Abbott with Mr. Rieger?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I believe he was charged</p> <p>13 with this Medicare working group.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Okay. And does this document help</p> <p>16 refresh your recollection as to your involvement</p> <p>17 with the Medicare working group?</p> <p>18 A. No.</p> <p>19 Q. Do you recall anything concerning or</p> <p>20 being involved with or commenting upon an AMA</p> <p>21 plan for overhauling the Medicare system?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 650</p> <p>1 position on Medicare reform?</p> <p>2 A. I don't recall, no.</p> <p>3 Q. Ma'am, do you notice at the top of this</p> <p>4 document that you are one of the To addressees?</p> <p>5 A. Well, I'm sorry. One of the two</p> <p>6 addressees?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. You were one of the addressees under</p> <p>10 the To section. I'm sorry.</p> <p>11 A. Oh, okay.</p> <p>12 Q. To, T-O.</p> <p>13 A. There's a number of people here. I see</p> <p>14 that my name is listed on this memo.</p> <p>15 Q. Okay. Do you have any doubt that you</p> <p>16 received this document, ma'am?</p> <p>17 A. I -- I would -- I have no doubt that I</p> <p>18 -- I know neither way, if I got it or didn't get</p> <p>19 it.</p> <p>20 Q. Okay. But you have no recollection of</p> <p>21 ever attending a meeting on 12/16/96?</p> <p>22 MS. TABACCHI: Object to the form.</p>
<p style="text-align: right;">Page 649</p> <p>1 THE WITNESS: I don't recall ever</p> <p>2 working on this.</p> <p>3 MS. ST. PETER-GRIFFITH: Can you mark</p> <p>4 the next exhibit, please?</p> <p>5 (Exhibit Tobiason 011 marked.)</p> <p>6 MS. ST. PETER-GRIFFITH: Let the record</p> <p>7 reflect that the witness has been handed what's</p> <p>8 been marked as Tobiason Exhibit 11.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Ma'am, do you recognize this document?</p> <p>11 A. No, I don't recognize it.</p> <p>12 Q. Do you remember attending a Medicare</p> <p>13 working group meeting on 12/16/96?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you remember having discussions with</p> <p>16 anyone within Abbott concerning Abbott's role or</p> <p>17 future participation in the AMA industry</p> <p>18 roundtable steering committee?</p> <p>19 A. No.</p> <p>20 Q. Do you remember having any discussions</p> <p>21 with anyone at Abbott concerning Abbott's steps</p> <p>22 in or about late '96 or early '97 concerning its</p>	<p style="text-align: right;">Page 651</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Is it possible that you could have, but</p> <p>4 you just don't recall?</p> <p>5 A. Oh, it's possible I could have. I just</p> <p>6 don't recall. This is 12 years ago.</p> <p>7 MS. ST. PETER-GRIFFITH: Mark the next</p> <p>8 exhibit, please.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. And, ma'am, my focus on this next</p> <p>11 exhibit is to -- is to again ask you your</p> <p>12 familiarity. I understand it's a longer</p> <p>13 document. You're free to take your time to look</p> <p>14 at it --</p> <p>15 A. Mm-hmm.</p> <p>16 Q. -- but I'm just going to ask you</p> <p>17 initially whether you recognize it or not, and</p> <p>18 then we can go from there.</p> <p>19 A. Mm-hmm.</p> <p>20 MS. ST. PETER-GRIFFITH: If we can mark</p> <p>21 the next exhibit.</p> <p>22 (Exhibit Tobiason 012 marked.)</p>

24 (Pages 648 to 651)

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<p style="text-align: right;">Page 652</p> <p>1 MS. ST. PETER-GRIFFITH: The witness is  2 being handed what's been marked as Tobiason  3 Exhibit 12. And I'll just state for the record  4 that this is a document that is at least a  5 portion of a document that was used previously by  6 Mr. Haviland and marked as Exhibit 761.  7 BY MS. ST. PETER-GRIFFITH:  8 Q. Ma'am, do you recall receiving this  9 document? Not in deposition.  10 A. Oh, because I remember from the  11 deposition.  12 Q. Okay.  13 A. No, I don't remember receiving this  14 document.  15 Q. Okay. Do you recall ever having any  16 discussions with Mr. Tootell concerning average  17 wholesale price issues?  18 MS. TABACCHI: Object to the form.  19 THE WITNESS: I don't recall from this  20 time period, no.  21 BY MS. ST. PETER-GRIFFITH:  22 Q. At any time. I'm asking you, I guess,</p>	<p style="text-align: right;">Page 654</p> <p>1 THE WITNESS: Not that I recall.  2 BY MS. ST. PETER-GRIFFITH:  3 Q. Do you ever recall Mr. Tootell telling  4 you that he went to Abbott's legal counsel to  5 express his concerns about Abbott's AWP policies  6 and procedures?  7 MS. TABACCHI: Object to the form.  8 THE WITNESS: No, not that I recall.  9 BY MS. ST. PETER-GRIFFITH:  10 Q. Ma'am, if we could go back to Exhibit  11 12. You're an addressee -- are you not? -- on  12 this memo from Mr. Rieger.  13 A. Yes, I am.  14 Q. Do you ever recall working with anyone  15 on issues raised concerning average wholesale  16 price in or around late '96/early '97?  17 MS. TABACCHI: Object to the form.  18 THE WITNESS: Not that I recall.  19 MS. ST. PETER-GRIFFITH: If we could  20 mark the next exhibit.  21 (Exhibit Tobiason 013 marked.)  22 MS. ST. PETER-GRIFFITH: Let the</p>
<p style="text-align: right;">Page 653</p> <p>1 more generally, not necessarily related to this  2 document, ma'am.  3 First of all, who is Mr. Tootell?  4 A. Mr. Tootell was the manager of  5 reimbursement for Ross products.  6 Q. So was he essentially your counterpart  7 to home infusion except in the Ross division?  8 MS. TABACCHI: Object to the form.  9 THE WITNESS: Well, his position was  10 different than mine. They didn't have a -- they  11 didn't do reimbursement services.  12 BY MS. ST. PETER-GRIFFITH:  13 Q. Okay. Ma'am, were you friendly with  14 Mr. Tootell?  15 MS. TABACCHI: Object to the form.  16 THE WITNESS: Well, I knew Mike, and we  17 talked, yes.  18 BY MS. ST. PETER-GRIFFITH:  19 Q. Did Mr. Tootell -- did you ever speak  20 with Mr. Tootell concerning his concerns about  21 Abbott's AWP policies and procedures?  22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 655</p> <p>1 witness -- let the record reflect that the  2 witness is being handed what's been marked as  3 Deposition Exhibit 13.  4 BY MS. ST. PETER-GRIFFITH:  5 Q. Ma'am, once again, this is a longer  6 document. I'm going to focus on your familiarity  7 or your recollection of your receipt of this  8 document, not necessarily about the specifics of  9 its content.  10 Ma'am, do you recall receiving --  11 A. Well, I'm looking at it so I can -- if  12 I can recall it.  13 Q. Okay.  14 A. Hold on one second.  15 Q. Ma'am, do you recall receiving what's  16 been marked as Tobiason Exhibit 13?  17 A. I don't recall receiving it.  18 Q. You are an addressee on the To list,  19 correct?  20 A. I am.  21 Q. Do you have any doubts that you would  22 have received this document?</p>

25 (Pages 652 to 655)

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<p style="text-align: right;">Page 656</p> <p>1 A. I have no -- I mean, I could have, and 2 I may not have. I don't know. 3 Q. Do you recall receiving a litigation 4 hold memorandum in or about '96? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: I remember receiving a 7 few litigation hold, yes. But I don't remember 8 the dates. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. If you had received a litigation hold 11 memorandum before January 15th, '97, would this 12 have been a document that you would have retained 13 in your files? 14 MS. TABACCHI: Object to the form. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. If you received it. 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: I -- I think I would have 19 complied with the hold request, yes, if I thought 20 it applied. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Ma'am, does this -- the Re line says</p>	<p style="text-align: right;">Page 658</p> <p>1 price as compared to actual cost or estimated 2 acquisition cost? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I do remember there -- 5 there may have been proposals on estimated 6 acquisition cost, but I don't recall where they 7 came from or whatever. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Okay. When you say proposals, what do 10 you mean? 11 A. Well, I don't -- I don't know. It 12 could have been -- I just remember there was 13 something about estimated acquisition cost. 14 Whether it was a regulation or a proposed or 15 legislation, I just don't remember. 16 Q. Do you recall any Abbott discussions 17 about that particular regulation or policy -- 18 MS. TABACCHI: Object -- 19 BY MS. ST. PETER-GRIFFITH: 20 Q. -- that you have a recollection? 21 MS. TABACCHI: -- to the form. 22 THE WITNESS: I remember vaguely that</p>
<p style="text-align: right;">Page 657</p> <p>1 "Medicare Working Group Meeting." Do you see 2 that? 3 A. Yes. 4 Q. Does this memo help refresh your 5 recollection as to any work that you did on the 6 Medicare working group? 7 A. No. 8 Q. Do you recall anything about a meeting 9 on 1/21/97 at 8:00 a.m. until 9:30? 10 A. I don't remember a meeting. 11 Q. Do you remember any discussions with 12 anyone about average wholesale price versus 13 actual cost issue? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: Not that I recall. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Do you know what that means, "Discuss 18 Average Wholesale Price vs. actual cost issue"? 19 A. I -- I don't know what they mean by 20 actual cost. 21 Q. Okay. Do you remember an issue arising 22 in or about '97 concerning average wholesale</p>	<p style="text-align: right;">Page 659</p> <p>1 on estimated acquisition that there may have been 2 some discussion -- with who, I don't remember -- 3 about the fact that -- that estimated acquisition 4 may not cover the true cost of the provider. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. When you say the true cost of the 7 provider, what do you mean? 8 A. Well, maybe not true cost. But because 9 if they -- if the 20 percent copays because 10 patients have to pay 20 percent of the estimated 11 acquisition. And if the provider didn't collect 12 it, it may not cover their -- their cost. 13 Q. Well, if they collected AWP, would they 14 be able to cover that 20 percent copay in the 15 event that a patient wouldn't pay it? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I don't know. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Well, why do you recall the issue of 20 the ability to collect the copay being a matter 21 of concern when discussing estimated acquisition 22 cost versus average wholesale price?</p>

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<p style="text-align: right;">Page 660</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: All I know is that we</p> <p>3 discussed estimated acquisition cost in that</p> <p>4 context.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Was it up to Abbott to ensure that in</p> <p>7 the event a patient could not pay a 20 percent</p> <p>8 copay that their pricing structure enabled the</p> <p>9 provider to cover that copay through</p> <p>10 reimbursements from Medicare or Medicaid?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Repeat that question.</p> <p>13 MS. ST. PETER-GRIFFITH: Can you read</p> <p>14 it back, please?</p> <p>15 (Record read.)</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I have no opinion on</p> <p>18 that.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Do you have a recollection of any</p> <p>21 discussions about the need to assist providers or</p> <p>22 physicians in covering their copays through</p>	<p style="text-align: right;">Page 662</p> <p>1 line, correct?</p> <p>2 A. I am.</p> <p>3 Q. Do you have any doubt that you received</p> <p>4 this memo?</p> <p>5 A. I could have received it, and I may not</p> <p>6 have.</p> <p>7 Q. Do you know why you were an addressee</p> <p>8 on this memo?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Do you remember receiving information</p> <p>13 from Cindy Sensibaugh in preparation for a</p> <p>14 1/21/97 Medicare working group meeting?</p> <p>15 A. No.</p> <p>16 Q. Do you remember a 1/21/97 Medicare</p> <p>17 working group meeting?</p> <p>18 A. I don't remember any meeting.</p> <p>19 Q. Who is Ms. Sensibaugh?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Cindy Sensibaugh works in</p> <p>22 our government affairs office in Washington.</p>
<p style="text-align: right;">Page 661</p> <p>1 Abbott's pricing schemes?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: I have no recollection of</p> <p>4 any discussions.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Do you have any other recollection</p> <p>7 about any issue raised in this memorandum?</p> <p>8 A. No.</p> <p>9 Q. Does this memorandum help refresh your</p> <p>10 recollection as to your involvement with the</p> <p>11 Medicare working group?</p> <p>12 A. No.</p> <p>13 MS. ST. PETER-GRIFFITH: Mark the next</p> <p>14 exhibit.</p> <p>15 (Exhibit Tobiason 014 marked.)</p> <p>16 MS. ST. PETER-GRIFFITH: Let the record</p> <p>17 reflect that the witness has been handed what's</p> <p>18 been marked as Tobiason Exhibit 14.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Ma'am, do you recognize this document?</p> <p>21 A. No.</p> <p>22 Q. You're one of the addressees on the To</p>	<p style="text-align: right;">Page 663</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Did you interact with Ms. Sensibaugh?</p> <p>3 A. Yes.</p> <p>4 Q. How would -- for what purpose did you</p> <p>5 interact with Ms. Sensibaugh?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: We would have -- I think</p> <p>8 she worked with HIMA, the Health Industry</p> <p>9 Manufacturers Association, and I worked with our</p> <p>10 trade association too. We may have had -- I</p> <p>11 don't remember specifics, but we might have</p> <p>12 talked, yes.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. But your recollection is that your</p> <p>15 conversations would have been in the context of</p> <p>16 her in relation to your work with the trade</p> <p>17 associations?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: It could have been. It</p> <p>20 could have been I might have discussed some</p> <p>21 coverage or coding issues with her.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>

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<p style="text-align: right;">Page 664</p> <p>1 Q. Would you have any other reason to 2 interact with Ms. Sensibaugh? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: You know, that's pretty 5 broad. I -- I don't know. I could have. I just 6 don't remember any. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Does -- 9 A. I don't remember specific 10 conversations. 11 Q. Does this memorandum help refresh your 12 recollection as to your involvement in the 13 Medicare working group? 14 A. I think you asked that, but no. 15 Q. Might have asked I'm not sure about 16 this document. We've got a number of them. Just 17 going to ask you every time. 18 (Exhibit Tobiason 015 marked.) 19 MS. TABACCHI: Sorry. Is there a 20 question? 21 MS. ST. PETER-GRIFFITH: Oh, sure. 22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 666</p> <p>1 substance of this document? 2 A. No. 3 (Exhibit Tobiason 016 marked.) 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Ma'am, I am going to spend a little bit 6 of time with this document, so I -- 7 A. Okay. 8 Q. Ma'am, do you recognize what's been 9 marked as Tobiason Exhibit 16? 10 A. No. 11 Q. Do you see -- 12 A. I don't recall. 13 Q. -- on the first page that handwritten 14 that says at the top, "To: Marie. Please fax 15 this document to:" and then you're listed as one 16 of the individuals? Do you see that? 17 A. I do. 18 Q. And it's from Mr. Rieger, down bottom? 19 A. Yes. 20 Q. Do you have a recollection of receiving 21 this facsimile from Mr. Rieger? 22 A. No.</p>
<p style="text-align: right;">Page 665</p> <p>1 Q. Ma'am, are you done reviewing the 2 document? 3 A. Yes. 4 Q. Do you recognize this document, ma'am? 5 A. No, I do not. 6 Q. You are listed on the To -- as one of 7 the addressees on the To line. Do you see that? 8 A. Yes. 9 Q. Do you have any doubt that you received 10 this document? 11 A. I could have received it and may not 12 have. I -- I am on the -- the list, yes. 13 Q. Does this document help refresh your 14 recollection concerning your involvement on the 15 Medicare working group? 16 A. No. 17 Q. Do you recall receiving or reviewing an 18 announcement of President Clinton's Medicare 19 reform package in or around '97? 20 A. I don't even remember that President 21 Clinton had a Medicare reform package. 22 Q. Do you remember anything else about the</p>	<p style="text-align: right;">Page 667</p> <p>1 Q. Does this document help refresh your 2 recollection of your involvement on the Medicare 3 working group? 4 A. No. 5 Q. Ma'am, if you could turn to the third 6 page of this document. 7 A. Mm-hmm. 8 Q. And I'd like to direct your attention 9 to the paragraph that says -- or the sentence or 10 the section that says Average Wholesale Price. 11 Do you see that? 12 A. I do. 13 Q. And this document at the top reflects 14 minutes from the Medicare working group meeting. 15 Do you see that? 16 A. Yes. 17 Q. The first sentence under Average 18 Wholesale Price reads: "Average wholesale price 19 is generally based upon the manufacturer's price 20 plus a markup of 15-20%." 21 Do you see that? 22 A. I do.</p>

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<p style="text-align: right;">Page 668</p> <p>1 Q. Ma'am, was that your understanding of 2 what average wholesale price was? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: At this time, I -- I knew 5 that AWP was put out and -- by the drug 6 databases. I wasn't sure of the exact 7 methodology used to calculate it. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Did you have an understanding, though, 10 that AWP was based in part upon the 11 manufacturer's price? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: I -- no. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Okay. Ma'am, the third sentence in 16 this bullet point reads: "There is a consensus 17 that 'AWP' is artificial and that the actual 18 acquisition costs would be better, however, it is 19 unclear whether actual acquisition costs can be 20 determined." 21 Do you see that? 22 A. "There is consensus." I do.</p>	<p style="text-align: right;">Page 670</p> <p>1 conversations. 2 BY MS. ST. PETER-GRIFFITH: 3 Q. Did you have any opinion one way or 4 another as to whether actual acquisition costs 5 should be used for purposes of Medicare 6 reimbursement or Medicaid reimbursement as 7 compared to AWP? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: No, I had no opinion. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. If you could flip to the last page of 12 this document, where it says Next Step. Do you 13 see that? 14 A. I do. 15 Q. The first bullet reads, "Obtain 'Notice 16 of Inherent Reasonableness' document from Mike 17 Tootell and distribute to Medicare Working 18 Group." 19 Do you see that? 20 A. I do. 21 Q. Do you recall receiving or having been 22 distributed to you a notice of inherent</p>
<p style="text-align: right;">Page 669</p> <p>1 Q. Do you have any recollections of any 2 discussions with anyone in Abbott concerning a 3 consensus that AWP is artificial and that actual 4 acquisition costs would be better? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: I don't -- no, I don't 7 know where this came from. No. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Well, do you agree that this -- these 10 are the minutes of the working group meeting? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: I -- I don't remember 13 these being the minutes, so I can't say yes or 14 no. But it appears to be. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Okay. Do you recall at any time in 17 this '97 time frame discussing with anyone a 18 concern that AWP may be artificial and that the 19 use of actual acquisition costs would be a better 20 practice? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: No, I don't recall any</p>	<p style="text-align: right;">Page 671</p> <p>1 reasonableness document? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: I recall an inherent 4 reasonableness document. I just don't know where 5 it came from. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Okay. What is inherent reasonableness? 8 A. Well -- 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: It's a -- it's a 11 mechanism whereby CMS can determine whether a 12 product, device, anything in the Medicare program 13 the payment level is inherently reasonable. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Okay. What do you recall about the 16 document that you may have reviewed? 17 A. And this is truly my vague recollection 18 that this may have been when they announced that 19 they may use inherent reasonableness authority. 20 Q. Okay. And what is your recollection 21 about the end result of that? 22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 672</p> <p>1 THE WITNESS: The end result during 2 what time period? 3 BY MS. ST. PETER-GRIFFITH: 4 Q. During this time period. 5 A. I don't really remember. There's been 6 ongoing discussions about IR with the agen -- I 7 mean, CMS has been sending out a lot of notices 8 on I -- I mean, discussions about IR. 9 Q. Do you recall what Abbott's position 10 was concerning IR -- 11 MS. TABACCHI: Object -- 12 BY MS. ST. PETER-GRIFFITH: 13 Q. -- during this time period? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: No, I don't remember. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Do you recall working on any 18 legislative initiatives or providing any 19 commentary on IR in furtherance of Abbott's 20 position? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: No, I don't.</p>	<p style="text-align: right;">Page 674</p> <p>1 THE WITNESS: I don't even remember 2 discussions about Medicare reform. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Do you have any idea why you might be 5 listed on this particular document as a key 6 participant on Abbott's position on Medicare 7 reform? 8 A. No. 9 Q. Do you remember any recollection -- do 10 you have any recollection of any conversations 11 with anyone concerning Medicare reform or 12 Abbott's position on Medicare reform in or around 13 '97? 14 A. No. 15 Q. Ma'am, this lists you as manager of 16 client services under the HPD category. 17 A. Mm-hmm. 18 Q. In '97, were you -- what was your job 19 title? 20 A. I was manager of client services, and I 21 was in the infusion business. 22 Q. Okay.</p>
<p style="text-align: right;">Page 673</p> <p>1 (Exhibit Tobiason 017 marked.) 2 MS. ST. PETER-GRIFFITH: Let the record 3 reflect that the witness has been handed what's 4 been marked as Tobiason Exhibit 17. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Ma'am, do you recognize this document? 7 A. No. 8 Q. At the top it reads Abbott Position on 9 Medicare Reform Key Participants. Do you see 10 that? 11 A. I do. 12 Q. And do you see that you are listed on 13 this document under HPD? Do you see that? 14 A. I do. 15 Q. Down at the bottom, the document 16 appears to be dated 2/7/97. Do you see that? In 17 very fine print. 18 A. I do. 19 Q. Okay. Ma'am, were you a key 20 participant on Abbott's position on Medicare 21 reform in or around February or early '97? 22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 675</p> <p>1 A. Which was an operating area within 2 hospital products. 3 Q. Okay. But were you still within home 4 infusion? 5 A. Yes. 6 Q. Did you have any responsibilities 7 outside of home infusion -- 8 A. No. 9 Q. -- in this time frame? 10 A. Not that I'm aware of, no. 11 (Exhibit Tobiason 018 marked.) 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Ma'am, do you recognize this package of 14 documents that's been marked as Tobiason Exhibit 15 18? 16 A. No, I don't. 17 Q. Do you recall ever working on any draft 18 language concerning AWP in or about the spring or 19 summer of '97? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: No. 22 BY MS. ST. PETER-GRIFFITH:</p>

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<p style="text-align: right;">Page 676</p> <p>1 Q. Do you know what AWP language may have 2 been submitted by Congressmen Archer or Hastert 3 on behalf of Abbott? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: No. Not that I recall. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Ma'am, if we could go back to Exhibit 8 16. 9 A. 16. Mm-hmm. 10 Q. And if we could flip to, again, the 11 third page -- 12 A. Yes. 13 Q. -- of that document. 14 A. Mm-hmm. 15 Q. Do you agree that the minutes of this 16 meeting give a general formula for determining 17 AWP from a manufacturer's list price? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I -- it says here that 20 it's based upon the manufacturer price plus a 21 markup of 15 to 20 percent. I have no opinion on 22 that.</p>	<p style="text-align: right;">Page 678</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. I'm just asking whether this refreshes 3 your recollection as to your involvement on the 4 Medicare working group. 5 A. No. 6 Q. Does this refresh your recollection as 7 to your involvement with Ms. Sensibaugh on any 8 legislative matters? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: No, not that I recall. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. This is a memo from Ms. Sensibaugh, 13 right? 14 A. Yes. 15 Q. Do you know why Ms. Sensibaugh would 16 have listed you as -- on the -- as one of the To 17 addressees on this particular memorandum? 18 A. Well, I believe she would have 19 addressed it to me because of the freezes, that 20 the payment level for DME would have been frozen 21 and also enteral would have been frozen. 22 Q. Any other reason?</p>
<p style="text-align: right;">Page 677</p> <p>1 MS. ST. PETER-GRIFFITH: Mark the next 2 exhibit, please. 3 (Exhibit Tobiason 019 marked.) 4 MS. ST. PETER-GRIFFITH: Let the record 5 reflect that the witness has been handed what's 6 been marked as Tobiason Exhibit 19. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. And, ma'am, I'm primarily going to 9 spend time on the first two pages of this 10 exhibit. 11 A. Mm-hmm. Yes. 12 Q. Ma'am, do you recognize this document? 13 A. No. 14 Q. You are -- you are listed as one of the 15 addressees under the To line, correct? 16 A. Yes. 17 Q. Does this refresh your recollection as 18 to involvement that you may have had on the 19 Medicare working group? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I don't know. Was this - 22 - was this a memo to the Medicare working group?</p>	<p style="text-align: right;">Page 679</p> <p>1 A. No, I think that would have been it 2 because that impacted infusion services. 3 Q. Under item number 1, AWP: 4 "Reimbursement for Medicare drugs will be at 95% 5 of AWP effective January 1, '98." 6 Do you see that? 7 A. Mm-hmm. Yeah, I do. 8 Q. Would that have affected reimbursement 9 services? 10 MS. TABACCHI: Object to the form. 11 THE WITNESS: It could have. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Would part of the reason why you might 14 have received this document been because of that 15 change to 95 percent of AWP effective January 1, 16 1998? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: I -- I -- I don't know. 19 I would have assumed it would have been the 20 parental and enteral nutrition. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Can you think of any other reason why</p>

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<p style="text-align: right;">Page 680</p> <p>1 you would have received this document?</p> <p>2 A. No.</p> <p>3 Q. Do you recall any conversations with</p> <p>4 Ms. Sensibaugh concerning the substance of the</p> <p>5 Balanced Budget -- Budget Agreement?</p> <p>6 A. I don't recall any conversations.</p> <p>7 Q. Do you recall anything else about the</p> <p>8 subject matter of this particular memorandum?</p> <p>9 A. No.</p> <p>10 (Exhibit Tobiason 020 marked.)</p> <p>11 MS. ST. PETER-GRIFFITH: Let the record</p> <p>12 reflect that the witness has been handed what's</p> <p>13 been marked as Tobiason Exhibit 20.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Ma'am, do you recognize this document?</p> <p>16 A. No.</p> <p>17 Q. Do you recall -- you are one of the</p> <p>18 addressees on the To list, correct?</p> <p>19 A. I am.</p> <p>20 Q. Do you have any doubt that you received</p> <p>21 this document?</p> <p>22 A. No. I -- I presume I received it.</p>	<p style="text-align: right;">Page 682</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Do you recall having any communications</p> <p>4 with anyone in or around 1998 concerning the</p> <p>5 Medicare Fraud or Overpayment Act introduced into</p> <p>6 Congress?</p> <p>7 A. No, I don't remem -- recollect any</p> <p>8 conversations.</p> <p>9 Q. Do you recall having any conversations</p> <p>10 with anyone concerning the change in</p> <p>11 reimbursement for Medicare drugs from 95 percent</p> <p>12 of AWP to acquisition cost?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I don't recall any</p> <p>15 specific conversations, no.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. We can start -- I'd like to spend a</p> <p>18 little time with this document.</p> <p>19 A. Mm-hmm.</p> <p>20 Q. Do you recall -- I'm sorry. On -- the</p> <p>21 third sentence of the first paragraph reads,</p> <p>22 "Most importantly for Abbott, the bill includes a</p>
<p style="text-align: right;">Page 681</p> <p>1 Q. If it was responsive to a lit hold</p> <p>2 memo, do you recall whether this was a document</p> <p>3 that you would have retained upon receipt?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: I -- I don't know.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Do you know why Ms. Sensibaugh included</p> <p>8 you as an addressee on this interoffice</p> <p>9 correspondence?</p> <p>10 A. No.</p> <p>11 Q. Do you recall anything about the</p> <p>12 Medicare Fraud and Overpayment Act introduced</p> <p>13 into Congress?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Does any of the subject matter of this</p> <p>18 particular memorandum impact at all your</p> <p>19 responsibilities or duties as manager of</p> <p>20 reimbursement services within home infusion in or</p> <p>21 around 1998?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 683</p> <p>1 provision (Section 2) that would change the</p> <p>2 reimbursement for Medicare drugs from 95% of AWP</p> <p>3 to acquisition cost, which is similar to the</p> <p>4 provision proposed by Clinton" -- "by President</p> <p>5 Clinton last year."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you know why it is that, most</p> <p>9 importantly, that change would impact Abbott?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Do you have any opinion at all as to</p> <p>14 why you may have received this document?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: There was a reference to</p> <p>17 parenteral nutrients. That could be why I</p> <p>18 received it.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. That references in the next sentence,</p> <p>21 "Unlike last year's proposal, Section 2 applies</p> <p>22 to parenteral nutrients" --</p>

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<p style="text-align: right;">Page 684</p> <p>1 A. Mm-hmm.</p> <p>2 Q. -- "and includes payment for</p> <p>3 administrative, storage and handling costs in the</p> <p>4 definition of acquisition cost."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. What impact would that have upon your</p> <p>8 responsibilities or the operation of</p> <p>9 reimbursement services within home infusion?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: We might have been</p> <p>12 notified by a carrier that they might have</p> <p>13 changed the fee schedule for parenteral</p> <p>14 nutrients.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Did you work at all with Ms. Sensibaugh</p> <p>17 on this Medicare fraud and abuse legislation?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: Not that I recall.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Do you recall working with anyone or</p> <p>22 discussing with anyone this Medicare fraud and</p>	<p style="text-align: right;">Page 686</p> <p>1 (Exhibit Tobiason 021 marked.)</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Ma'am, does this --</p> <p>4 MS. ST. PETER-GRIFFITH: Let the record</p> <p>5 reflect that the witness has been handed what's</p> <p>6 been marked as Tobiason Exhibit 21.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Ma'am, does this refresh your</p> <p>9 recollection as to any involvement that you may</p> <p>10 have had with Ms. Sensibaugh commenting upon any</p> <p>11 proposed rules by DHHS?</p> <p>12 A. No. This memo looks like it's from</p> <p>13 Bruce to Cindy.</p> <p>14 Q. Okay. But it references a conversation</p> <p>15 that you may have had with Ms. Sensibaugh, does</p> <p>16 it -- doesn't it?</p> <p>17 A. It does, yes.</p> <p>18 Q. Do you recall any conversation with Ms.</p> <p>19 Sensibaugh --</p> <p>20 MS. TABACCHI: Object --</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. -- concerning the proposed rules</p>
<p style="text-align: right;">Page 685</p> <p>1 abuse legislation or AWP language?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: No, not that I recall.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Does this memorandum help refresh your</p> <p>6 recollection as to your involvement on the</p> <p>7 Medicare working group?</p> <p>8 A. No. I don't even know if this was a</p> <p>9 Medicare working group document.</p> <p>10 Q. Ma'am, do you recall working with Ms.</p> <p>11 Sensibaugh on any comments to any proposed rules</p> <p>12 in or around '98?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: I -- I don't recall</p> <p>15 talking to Cindy about any comments.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Do you recall any -- with -- how</p> <p>18 frequently you spoke with Cindy?</p> <p>19 A. No.</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 MS. ST. PETER-GRIFFITH: Mark this as</p> <p>22 the next exhibit.</p>	<p style="text-align: right;">Page 687</p> <p>1 involving standards for electronic data</p> <p>2 interchange of insurance transactions?</p> <p>3 A. No, I don't recollect any.</p> <p>4 Q. Ma'am, what do you recall about</p> <p>5 Abbott's maintaining a formal written policy on</p> <p>6 fraud and abuse?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I -- I don't -- I don't</p> <p>9 know one way or the other whether we had a</p> <p>10 written policy.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Well, do you know whether you had --</p> <p>13 whether Abbott had a written policy after</p> <p>14 entering into the 2003 CIA incident to the Ross</p> <p>15 settlement?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: Well, Abbott created a</p> <p>18 number of policies.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Okay. Do you recall a policy</p> <p>21 concerning fraud and abuse being one of them?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 688</p> <p>1 THE WITNESS: I don't know what you 2 mean by the fraud and abuse. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Ma'am, what do you recall about Abbott 5 maintaining a code of business conduct at any 6 time? 7 A. I recall that Abbott's had a code of 8 conduct. 9 Q. How long has -- did Abbott maintain a 10 code of written -- maintain a written code of 11 conduct? 12 A. Oh, I think for many years. 13 Q. Where would this -- where would you as 14 an Abbott employee access this code of written 15 conduct? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I would think we would 18 have gotten it from our human resources 19 department. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Did you participate at all in any 22 drafting of any portion of the code of business</p>	<p style="text-align: right;">Page 690</p> <p>1 over? 2 MS. ST. PETER-GRIFFITH: Or is yours, 3 Tina? 4 MS. TABACCHI: Mine is okay. 5 THE WITNESS: Yes. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Okay. Ma'am, if we could just swap out 8 our page 16s. 9 A. Mm-hmm. 10 Q. Thank you. 11 And my particular focus on questioning 12 -- on questions is going to be in the Medicare 13 Fraud &amp; Abuse Laws section. 14 A. Mm-hmm. 15 Q. First, ma'am, do you recognize what's 16 been marked as Tobiason Exhibit 22? 17 A. Yeah, this looks like our code of 18 conduct. Yes. 19 Q. Okay. Do you recall reading this code 20 of conduct? 21 A. Oh, I'm sure I did at some point. 22 Q. Okay.</p>
<p style="text-align: right;">Page 689</p> <p>1 conduct at any time during your tenure as an 2 Abbott employee? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: Well, I think there was a 5 revision done some -- sometime in the 2000s. And 6 I -- I believe I looked at a draft. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Do you recall whether that was before 9 or after the Ross CIA? 10 A. I don't remember. 11 Q. Do you recall Abbott's code of business 12 conduct in 1999? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: I know we had -- I'm 15 pretty sure we had a business -- a code of 16 conduct, yes. 17 MS. ST. PETER-GRIFFITH: If you can 18 mark this as the next exhibit, please. 19 (Exhibit Tobiason 022 marked.) 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Ma'am, my focus is going to be upon 22 page 16. And I'm sorry. Is your page 16 folded</p>	<p style="text-align: right;">Page 691</p> <p>1 A. When, I don't remember. 2 Q. Ma'am, if you could look at -- on page 3 16. 4 A. Mm-hmm. 5 Q. Under the section Medicare Fraud &amp; 6 Abuse Laws. Do you see that? 7 A. Yes. 8 Q. The first sentence reads: "It is the 9 policy of the Company to comply, and all 10 employees shall comply, with all applicable 11 federal and state fraud and abuse or 'anti- 12 kickback' laws and regulations as well as all 13 applicable provisions of the Federal False Claims 14 Act." 15 Do you see that? 16 A. Yes. 17 Q. What did you as the manager of home 18 infusion reimbursement services do to ensure that 19 home infusion reimbursement services complied 20 with all federal and state fraud and abuse or 21 anti-kickback laws and regulations and the 22 federal False Claims Act?</p>

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<p style="text-align: right;">Page 692</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: Well, I followed any</p> <p>3 policies and procedures that we had, and I also</p> <p>4 conformed with anything that I was told.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Okay. When you say you followed any</p> <p>7 policies and procedures, what policies and</p> <p>8 procedures?</p> <p>9 A. Well, we did have policies and</p> <p>10 procedures on how to submit claims.</p> <p>11 Q. Okay. How do you know that they were</p> <p>12 in compliance with state or federal anti-kickback</p> <p>13 fraud and abuse -- or anti-kickback or fraud and</p> <p>14 abuse laws or the federal False Claims Act?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: Well, our legal</p> <p>17 department was involved with.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Were they involved with developing</p> <p>20 those policies and procedures?</p> <p>21 A. Well, a lot of policies and procedures</p> <p>22 were involved with just how -- how often you did</p>	<p style="text-align: right;">Page 694</p> <p>1 -- that the physician had to fill in the CMNs --</p> <p>2 we weren't allowed to fill in the CMNs -- that we</p> <p>3 put the correct information on the claim form</p> <p>4 regards to the diagnosis and the products. We</p> <p>5 made sure that what the pharmacy dispensed was</p> <p>6 what we put on the claim form.</p> <p>7 We put a lot of emphasis on making sure</p> <p>8 that we got the patient's permission to bill and</p> <p>9 that we followed appropriate claims submission</p> <p>10 rules.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Well, how did you know that -- what was</p> <p>13 appropriate claims submission rules in term --</p> <p>14 how did you know that those rules complied with</p> <p>15 the anti-kickback laws or fraud and abuse laws</p> <p>16 and the False Claims Act?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: Well, we -- if we had any</p> <p>19 -- I don't remember any specific questions. But</p> <p>20 we would have used our legal department.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Did your legal department review your</p>
<p style="text-align: right;">Page 693</p> <p>1 follow up, a lot of the just operational issues.</p> <p>2 But I don't know how this would apply</p> <p>3 to -- the legal department approved all the</p> <p>4 arrangements that we had.</p> <p>5 Q. Okay. But how did you as the manager</p> <p>6 of reimbursement services know that your staff</p> <p>7 was not violating fraud and abuse laws or anti-</p> <p>8 kick -- the anti-kickback statutes or the federal</p> <p>9 False Claims Act?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: Can you be more specific?</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Sure. Did you have any way of</p> <p>14 monitoring whether or not the policies and</p> <p>15 practices within your home infusion unit complied</p> <p>16 with state and federal fraud and abuse, anti-</p> <p>17 kickback statutes, or the federal False Claims</p> <p>18 Act?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: Well, we made sure that</p> <p>21 we followed medical necessity. There were rules</p> <p>22 and regulations regarding medical necessity, that</p>	<p style="text-align: right;">Page 695</p> <p>1 policies, practices, and procedures within home</p> <p>2 infusion to ensure that you were not violating</p> <p>3 any fraud and abuse laws or the federal False</p> <p>4 Claims Act?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 You can answer that question without</p> <p>7 revealing the substance --</p> <p>8 THE WITNESS: Mm-hmm.</p> <p>9 MS. TABACCHI: -- of any communications</p> <p>10 with counsel, if there are any.</p> <p>11 MS. ST. PETER-GRIFFITH: Well, hold on.</p> <p>12 Tina, are you taking the position that Abbott</p> <p>13 will not be relying upon any advice-of-counsel</p> <p>14 defense with regard to such compliance?</p> <p>15 MS. TABACCHI: I -- I only am</p> <p>16 cautioning the witness that to the extent that</p> <p>17 she can answer yes or no or some similar answer</p> <p>18 without revealing the substance of any specific</p> <p>19 conversation she had with counsel that that's my</p> <p>20 preference. I'm not instructing her not to</p> <p>21 answer the question.</p> <p>22 I just don't want her to reveal the</p>

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<p style="text-align: right;">Page 696</p> <p>1 substance of a specific conversation until I have 2 a chance to discuss that with her. I don't know 3 what privileged conversations might be triggered 4 by your inquiry. 5 MS. ST. PETER-GRIFFITH: Can you read 6 back the question, please? 7 (Record read.) 8 THE WITNESS: I don't remember 9 specifically if -- what -- what policies or 10 procedures legal looked at. And I don't know -- 11 I can't say if they looked at them regards to the 12 -- the fraud and abuse statutes. I just don't 13 know. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Well, then how do you know that the 16 policies, practices, and procedures within the 17 home infusion reimbursement department didn't 18 violate fraud and abuse laws or the False Claims 19 Act? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: We tried to bill as 22 accurately as possible. We put -- our -- our</p>	<p style="text-align: right;">Page 698</p> <p>1 and the federal False Claims Act? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: I think that's a very 4 hard question to answer. The customers were 5 ultimately responsible. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. But did Abbott have a role in making 8 decisions regarding claims submission -- 9 MS. TABACCHI: Object to the form. 10 BY MS. ST. PETER-GRIFFITH: 11 Q. -- on behalf of the customer? 12 A. In what regard? 13 Q. In any regard. 14 MS. TABACCHI: Object -- 15 THE WITNESS: Well, I mean, there's a 16 lot of things with claims submission. As I 17 mentioned, in terms of policies and procedures on 18 medical information, we would review these 19 procedures with the customer. We would review 20 all our policies and procedures with the 21 customer. So we tried to adhere to what the 22 customer wanted.</p>
<p style="text-align: right;">Page 697</p> <p>1 concern was getting the information correctly and 2 putting it on the claim form. Medical necessity, 3 we worried about that, and we also wanted to make 4 sure that what we -- what products were used, 5 what was actually dispensed to the -- to the 6 patient. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. How did you ensure that your actual 9 billing, meaning the charges that you charged to 10 Medicare and Medicaid, did not violate fraud and 11 abuse laws, the anti-kickback statute, or the 12 False Claims Act? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: That wasn't my decision 15 to the charges. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Whose decision was it? 18 A. The customer's. 19 Q. Whose responsibility was it to ensure 20 that the billing and the claims submitted by 21 Abbott on behalf of the customer complied with 22 fraud and abuse laws, the anti-kickback statute,</p>	<p style="text-align: right;">Page 699</p> <p>1 We did not set prices. The prices was 2 the customer's responsibility. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Did you have an understanding that 5 causing a false claim to be submitted violated 6 the anti-kickback statute or the federal False 7 Claims Act? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: Well, my understanding is 10 that, you know, there -- there is a False Claims 11 Act, yes. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Okay. And how did the home infusion 14 unit ensure that when it submitted claims on 15 behalf of its home infusion clients that it was 16 not violating any state fraud and abuse laws or 17 the anti-kickback statute? 18 MS. TABACCHI: Object to the form. 19 Asked and answered. 20 THE WITNESS: It was we followed any 21 legal re -- legal -- if legal had requirements, 22 we followed them.</p>

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<p style="text-align: right;">Page 700</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Okay. What were the legal requirements</p> <p>3 that you can recall that you -- that you followed</p> <p>4 to ensure that you didn't violate any fraud and</p> <p>5 abuse laws or the False Claims Act?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: You know, I'm not a</p> <p>8 lawyer. I don't know what the specifics of the</p> <p>9 Fraud and Abuse Act are. All I know is that we</p> <p>10 did follow policies and procedures. We tried to</p> <p>11 get the medical necessity correct. We coded them</p> <p>12 as appropriately as possible. We wanted to make</p> <p>13 sure the coding was -- identified the products</p> <p>14 correctly, and we used customers' prices.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. But how -- if you used customers'</p> <p>17 prices and the customer pricing that you used</p> <p>18 violated the fraud and abuse laws and the federal</p> <p>19 claims -- the federal False Claims Act when</p> <p>20 submitted, would you submit those claims?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 Object to the form.</p>	<p style="text-align: right;">Page 702</p> <p>1 department.</p> <p>2 MS. ST. PETER-GRIFFITH: Okay. Why</p> <p>3 don't we take a break to change the tape.</p> <p>4 THE VIDEOGRAPHER: We are off the</p> <p>5 record --</p> <p>6 MS. TABACCHI: Take a break for --</p> <p>7 THE WITNESS: Lunch.</p> <p>8 MS. TABACCHI: -- for lunch here? It's</p> <p>9 after 12:00.</p> <p>10 MS. ST. PETER-GRIFFITH: Sure.</p> <p>11 THE VIDEOGRAPHER: We are off the</p> <p>12 record at 12:02 p.m. with the end of Tape No. 2.</p> <p>13 (Lunch recess taken.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 701</p> <p>1 THE WITNESS: It would be -- if the</p> <p>2 customer approved it, I -- they would have</p> <p>3 checked it with their legal department.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. So you then would rely upon the</p> <p>6 customer to ensure that the billing that was done</p> <p>7 through the home infusion unit did not violate</p> <p>8 the federal fraud and abuse laws and the False</p> <p>9 Claims Act.</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 This has been asked and answered.</p> <p>12 THE WITNESS: I -- the customer would</p> <p>13 take the information initially regarding the</p> <p>14 patient. So therefore, we followed what the</p> <p>15 customer said. In many cases, the customer sent</p> <p>16 out the medical necessity forms. Sometimes we'd</p> <p>17 do it. And they would set the prices.</p> <p>18 We would follow their requirements. If</p> <p>19 they had special requirements of their legal</p> <p>20 department, we would follow it because I assume</p> <p>21 that they -- well, not assume. I knew that they</p> <p>22 would have checked it with their legal</p>	<p style="text-align: right;">Page 703</p> <p>1 AFTERNOON SESSION</p> <p>2</p> <p>3 THE VIDEOGRAPHER: We are back on the</p> <p>4 record at 1:07 p.m. with the start of Tape No. 3.</p> <p>5</p> <p>6 VIRGINIA TOBIASON,</p> <p>7 called as a witness herein, having been</p> <p>8 previously duly sworn and having testified, was</p> <p>9 examined and testified further as follows:</p> <p>10</p> <p>11 EXAMINATION (Resumed)</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Ms. Tobiason, before the break, we were</p> <p>14 talking about the Medicare/Medicaid Fraud &amp; Abuse</p> <p>15 Laws section of the code of business conduct.</p> <p>16 And prior to the break, you'd referenced that the</p> <p>17 prices are set by the client. Can you -- page</p> <p>18 16. Can you explain what you meant by that?</p> <p>19 A. What I meant was that the -- I guess</p> <p>20 the charges that we charge insurance companies</p> <p>21 for the services and products they provided --</p> <p>22 you know, that were provided were set by the</p>

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<p style="text-align: right;">Page 704</p> <p>1 customers.</p> <p>2 Q. What about the charges to Medicaid and</p> <p>3 Medicare?</p> <p>4 A. Oh, they would set those.</p> <p>5 Q. Medicaid and Medicare would set those?</p> <p>6 A. No, they would -- the clients would set</p> <p>7 their usual and customaries.</p> <p>8 Q. Okay. Were the clients' usual and</p> <p>9 customaries at all predicated upon or based upon</p> <p>10 the AWP's published for the Abbott products that</p> <p>11 they used?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I -- I don't know. They</p> <p>14 set their -- they -- they determined their</p> <p>15 methodology and what prices they set. I -- I</p> <p>16 wasn't involved in that decision.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Was there any consideration at all</p> <p>19 within the home infusion unit given to reporting</p> <p>20 to Medicaid or Medicare the AWP spreads on the</p> <p>21 Abbott products utilized by the consignment</p> <p>22 partners for which Abbott Home Infusion</p>	<p style="text-align: right;">Page 706</p> <p>1 ensured that when it submitted claims on behalf</p> <p>2 of a home infusion client that it was not</p> <p>3 violating federal or state fraud and abuse or</p> <p>4 anti-kickback laws or the False Claims Act?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Well, we had policies and</p> <p>7 procedures. I had -- we -- it was -- there was</p> <p>8 ongoing audits of the specialist claims to make</p> <p>9 sure they adhered to our policies and procedures.</p> <p>10 We also were audited by government</p> <p>11 payors at times. So I felt pretty comfortable</p> <p>12 that we were submitting claims correctly.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. What policies and procedures are you</p> <p>15 referencing?</p> <p>16 A. Well, we had reimbursement policies and</p> <p>17 procedures on -- that were operational in nature,</p> <p>18 as well as -- and we also followed -- we went to</p> <p>19 training sessions by Medicare and Medicaid so</p> <p>20 that we made sure that we followed what they</p> <p>21 required and tried to incorporate in our policies</p> <p>22 what we were told by the different carriers.</p>
<p style="text-align: right;">Page 705</p> <p>1 reimbursement was submitting claims on behalf of</p> <p>2 their clients?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Could you repeat that?</p> <p>5 That was -- had a lot in it.</p> <p>6 MS. ST. PETER-GRIFFITH: Could you read</p> <p>7 that back, please?</p> <p>8 (Record read.)</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: Not that I'm aware of,</p> <p>11 no.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Who would make a decision as -- about</p> <p>14 whether or not AWP spreads needed to be reported</p> <p>15 to Medicaid or Medicare for the claims submitted</p> <p>16 by home infusion reimbursement?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Other than relying upon advice from the</p> <p>21 home infusion client, was there any other way or</p> <p>22 manner that Abbott Home Infusion reimbursement</p>	<p style="text-align: right;">Page 707</p> <p>1 Q. Okay. What specific policies and</p> <p>2 procedures did Abbott Home Infusion have or</p> <p>3 maintain that ensured that they did not violate</p> <p>4 the state and federal fraud and abuse, anti-</p> <p>5 kickback statutes, or the False Claims Act?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: We did policies and</p> <p>8 procedures so that we conform with what the</p> <p>9 payors required.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Okay. What were those policies and</p> <p>12 procedures?</p> <p>13 A. I don't remember them specifically, but</p> <p>14 they were -- there were policies on -- on getting</p> <p>15 the information up front, the types of insurance,</p> <p>16 the -- the re -- there were policies on getting</p> <p>17 the assignment of benefit forms, the medical</p> <p>18 necessity, follow-up on the HCFA 1500.</p> <p>19 Also making sure that what did the</p> <p>20 payors require? Were there specific</p> <p>21 requirements? Also, you know, running different</p> <p>22 reports like the aging report, follow-up on</p>

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<p style="text-align: right;">Page 708</p> <p>1 outstanding claims, things like that. There were</p> <p>2 -- there was a fair amount of operational issues.</p> <p>3 Q. Well, how did those operational issues</p> <p>4 or the policies governing those operational</p> <p>5 issues ensure that Abbott Home Infusion was not</p> <p>6 violating applicable federal and state anti-</p> <p>7 kickback statutes or the False Claims Act?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: Our goal was to submit</p> <p>10 claims as accurately as possible in compliance</p> <p>11 with what the payors required.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. But if the payors -- I'm sorry -- if</p> <p>14 the clients were giving you false information</p> <p>15 concerning the pricing on their services that</p> <p>16 they were providing, how would you know that</p> <p>17 before you submitted a claim on their behalf?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: Why would I assume they</p> <p>20 were giving us false information?</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Would you have a way of checking</p>	<p style="text-align: right;">Page 710</p> <p>1 A. I think -- I think one was in the --</p> <p>2 could have been in the 1990s. I don't remember.</p> <p>3 Q. Any --</p> <p>4 A. Early probably.</p> <p>5 Q. Okay. Were they both in the '90s?</p> <p>6 A. I don't remember.</p> <p>7 Q. And how do you know that those Medicare</p> <p>8 audits -- strike that question.</p> <p>9 And did you do anything else within</p> <p>10 home infusion to ensure that Abbott's home</p> <p>11 infusion practices and procedures did not violate</p> <p>12 the anti-kickback statutes and regulations or the</p> <p>13 federal False Claims Act?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: Our goal was to submit</p> <p>16 the claims as correctly as possible in accordance</p> <p>17 with what the payors required.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. But how do you know you complied with</p> <p>20 the law?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: Well, we went to training</p>
<p style="text-align: right;">Page 709</p> <p>1 whether or not they were giving you false or</p> <p>2 inflated charges to bill to Medicaid or Medicare?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Inflated, I -- I -- the</p> <p>5 clients had put together their -- their charges.</p> <p>6 I -- I -- they always seemed reasonable to me.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. They always seemed reasonable to you?</p> <p>9 A. Well, I didn't look at every charge, to</p> <p>10 be honest with you. I have no -- I shouldn't</p> <p>11 have said that. That's incorrect. I didn't look</p> <p>12 at the individual charges.</p> <p>13 But, you know, there were audits, and</p> <p>14 Medicare audited certain things, and there was</p> <p>15 never any -- any indication that these charges</p> <p>16 weren't in line.</p> <p>17 Q. What Medicare audits do you recall?</p> <p>18 A. Well, I remember there were -- there</p> <p>19 were a couple of Medicare audits.</p> <p>20 Q. When were they?</p> <p>21 A. I don't remember the exact time.</p> <p>22 Q. Do you remember the decade?</p>	<p style="text-align: right;">Page 711</p> <p>1 sessions by the payors. We did -- we checked to</p> <p>2 make sure that the reimbursement specialists</p> <p>3 followed the guidelines. We -- if there was --</p> <p>4 if there was a payment change or there was -- we</p> <p>5 mon -- we -- we looked at denials of claims to</p> <p>6 make sure that we were doing them appropriately.</p> <p>7 And we changed our policies if there were</p> <p>8 changes.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Did you attend any training by Medicare</p> <p>11 or Medicaid concerning these consignment</p> <p>12 arrangements that served as the predicate for the</p> <p>13 business model for Abbott Home Infusion?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I -- they would have</p> <p>16 training sessions on -- on requirements for home</p> <p>17 infusion for Medicare, enteral and parenteral,</p> <p>18 and the DME benefit, and we attended those. If</p> <p>19 it was discussed, I don't really remember</p> <p>20 discussions about it.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Do you --</p>

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<p style="text-align: right;">Page 712</p> <p>1 A. But it could have been gone over. They 2 could have. 3 Q. Do you recall it being gone over? 4 A. No. 5 Q. Do you recall anyone at all ever 6 discussing with any state or Medicaid -- Medicaid 7 official -- any state Medicaid official or any 8 federal Medicare official these consignment 9 arrangements for which Abbott Home Infusion was 10 billing? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: I'm not aware of any. 13 BY MS. ST. PETER-GRIFFITH: 14 Q. Where were these policies and 15 procedures that you've referenced in your 16 testimony maintained? 17 A. They were maintained in the 18 reimbursement department. 19 Q. Do you know where they are today? 20 A. No. 21 Q. Would you have retained them and 22 preserved them incident to a litigation hold</p>	<p style="text-align: right;">Page 714</p> <p>1 closure? 2 A. No. 3 Q. Did you retain any materials, any 4 policies or procedures, guidebooks, anything from 5 your days in home infusion that you took with you 6 after you left home infusion? 7 A. No. 8 Q. Where did you leave your -- any 9 reference materials that you had, including 10 policies and procedures, when you left home 11 infusion? 12 A. They would have been in the home 13 infusion reimbursement department. 14 Q. Okay. Now, Ms. Tobiason, earlier today 15 we went over a series of documents. And you have 16 in front of you Exhibits 5, 7, 8, 11, 15, and 16, 17 which on their face appear to deal with the 18 Medicare working group. We went over those 19 earlier today. 20 I just have some general questions 21 about -- 22 A. Mm-hmm.</p>
<p style="text-align: right;">Page 713</p> <p>1 memorandum? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: If they met the 4 requirements of the litigation hold, yes, I think 5 we would have. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Do you recall specifically whether any 8 were maintained -- 9 MS. TABACCHI: Object -- 10 BY MS. ST. PETER-GRIFFITH: 11 Q. -- in response to a litigation hold 12 memorandum? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: No, I don't. 15 BY MS. ST. PETER-GRIFFITH: 16 Q. Are you familiar with the closure of 17 the Abbott Home Infusion unit? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I'm aware that they 20 closed it, yes. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Were you involved in any way with the</p>	<p style="text-align: right;">Page 715</p> <p>1 Q. -- Abbott's -- first of all, if these 2 documents were -- were -- came from -- were 3 supplied to the United States by Abbott's counsel 4 and were represented as being business records of 5 Abbott, would you have any reason to doubt that? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: I have no reason, no. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Was there any business practice that 10 you're aware of at Abbott whereby individuals who 11 were addressees on particular memoranda would not 12 receive the memoranda? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: No, except that these 15 would go through interoffice mail and regular 16 mail. If they got there, they -- I mean, I would 17 assume they did, but I don't know for a fact. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Well, would you have any reason to 20 doubt the accuracy or the ability to receive -- 21 the accuracy of interoffice mail? 22 A. No.</p>

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<p style="text-align: right;">Page 716</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Okay. Were you aware of any problems</p> <p>5 in terms of the receipt of documents through</p> <p>6 interoffice mail within -- within Abbott Home</p> <p>7 Infusion?</p> <p>8 A. No.</p> <p>9 Q. What about Abbott-wide? Are you</p> <p>10 familiar with any major problem receiving</p> <p>11 documents from other divisions within Abbott when</p> <p>12 you were in home infusion?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: No, not really, except</p> <p>15 they had to get everything correct on the</p> <p>16 envelopes. So things got missed, but I wouldn't</p> <p>17 say it was -- it would be more an exception.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Well, do you have any reason to doubt</p> <p>20 that any of the documents that you reviewed</p> <p>21 earlier today that I just referenced wouldn't</p> <p>22 have come to you if they were addressed to you?</p>	<p style="text-align: right;">Page 718</p> <p>1 we're unaware of.</p> <p>2 Based upon the exhibits that we've seen</p> <p>3 here today, do you have any doubt that you were a</p> <p>4 member of a group called the Medicare working</p> <p>5 group and that you worked on Medicare-type</p> <p>6 issues, including AWP issues?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I believe I was on the</p> <p>9 Medicare working group. The specific subjects, I</p> <p>10 don't remember what I worked on.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. What was your practice when you</p> <p>13 received a document such as the memoranda that --</p> <p>14 that we saw here today?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: Well, in general, if I</p> <p>17 got a document, I might read it; I might not.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Okay. Under what circumstances would</p> <p>20 you not read a document that you received?</p> <p>21 A. Depends how busy I was.</p> <p>22 Q. Did you receive a lot of memoranda</p>
<p style="text-align: right;">Page 717</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: I -- I assume they would</p> <p>3 have come to me.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Ms. Tobiason, with regard to Exhibits</p> <p>6 9, 14, 17, 20, and 19, these are documents which</p> <p>7 don't on their face reference the Medicare</p> <p>8 working group, but they pertain to Medicare-type</p> <p>9 issues and were generally derived from either Ms.</p> <p>10 Sensibaugh, Mr. Rieger, or Mr. Miller.</p> <p>11 Would you have any reason to doubt that</p> <p>12 you received any of those documents if they were</p> <p>13 addressed to you via interoffice mail?</p> <p>14 A. I would assume they got there, yes.</p> <p>15 Q. What did you do when you received these</p> <p>16 documents? Did you just not address them?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. You've obviously received a number of</p> <p>21 correspondence that we've shown you here today.</p> <p>22 There might be other correspondence that -- that</p>	<p style="text-align: right;">Page 719</p> <p>1 during the day?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: My primary responsibility</p> <p>4 was the operations of home infusion services.</p> <p>5 So, therefore, if there were -- if I -- if I had</p> <p>6 a lot of work to do with -- with reimbursement</p> <p>7 services, if I got a memo on things that weren't</p> <p>8 -- may not be directly related, I may not have</p> <p>9 read it. I may not have even acknowledged it. I</p> <p>10 may have put it aside to read later. I -- I</p> <p>11 really don't know what I did with any of these</p> <p>12 documents.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Ms. Tobiason, we've deposed now a</p> <p>15 number of people in this case, many of whom refer</p> <p>16 to you as the reimbursement guru, not just for</p> <p>17 home infusion, but for Abbott HPD itself. Would</p> <p>18 you agree with that characterization of your role</p> <p>19 within Abbott HPD?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: The reimbursement guru?</p> <p>22 Well, there weren't many people in HPD dealing</p>

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<p style="text-align: right;">Page 720</p> <p>1 with reimbursement at that time. So since I was  2 doing infusion services, that may be why they  3 referred to me.  4 BY MS. ST. PETER-GRIFFITH:  5 Q. Well, do you know -- well, strike that.  6 A. There was nobody -- I mean --  7 Q. Did individuals come to you outside of  8 home infusion with reimbursement questions?  9 MS. TABACCHI: Object to the form.  10 THE WITNESS: Well, possibly. I -- I  11 don't really remember any specifics.  12 MS. ST. PETER-GRIFFITH: I'd like to  13 mark the next composite package -- oh, dear -- as  14 the next exhibit.  15 And this is a composite, Tina, of  16 several -- a series of several e-mails.  17 MS. TABACCHI: Are we on 23 now?  18 MS. ST. PETER-GRIFFITH: Yeah, I  19 believe so.  20 (Exhibit Tobiason 023 marked.)  21 BY MS. ST. PETER-GRIFFITH:  22 Q. And, ma'am, my focus is going to be on</p>	<p style="text-align: right;">Page 722</p> <p>1 11/16/2001. Actually, I don't think they are out  2 of sequence now that I look at that.  3 A. Mm-hmm.  4 Q. Ma'am, do you recognize these e-mail?  5 A. No.  6 Q. Do you recognize that you are an  7 addressee on each of the e-mails, either as a cc  8 or someone directed on the To line?  9 A. Yes.  10 Q. Who is Rosemary Haas?  11 A. Rosemary Haas works in our federal  12 government affairs.  13 Q. Do you know why Ms. Haas would have  14 included you either as a cc or an addressee on  15 each of these e-mail?  16 MS. TABACCHI: Object to the form.  17 THE WITNESS: No.  18 BY MS. ST. PETER-GRIFFITH:  19 Q. Do you recall at all being involved on  20 any Medicare or Medicaid legislative matters in  21 or around late 2000 or in 2001?  22 MS. TABACCHI: Object to the form.</p>
<p style="text-align: right;">Page 721</p> <p>1 the content of the actual e-mail themselves.  2 A. Okay.  3 MS. TABACCHI: Ann, my copy is  4 highlighted. Do you want to trade me?  5 MS. ST. PETER-GRIFFITH: Oh, my. Yes.  6 That would explain -- that would explain why I  7 thought I didn't have any questions on one of  8 them.  9 MS. TABACCHI: I could have kept that  10 to myself.  11 MS. ST. PETER-GRIFFITH: Oh, Tina. I  12 know you wouldn't have done that.  13 BY MS. ST. PETER-GRIFFITH:  14 Q. Ma'am, this composite Exhibit 23 is a  15 series of e-mails.  16 A. Mm-hmm.  17 Q. I realize that the first one labeled is  18 11/22/02. They're a little bit out of sequence.  19 A. No, the first one says 2000.  20 Q. I'm sorry. 2000, yes.  21 A. Mm-hmm.  22 Q. And then there's an 11/15/2001 and then</p>	<p style="text-align: right;">Page 723</p> <p>1 THE WITNESS: I believe in 2000 and  2 2001, I was in our diagnostics division and I  3 dealt with diagnostic devices.  4 BY MS. ST. PETER-GRIFFITH:  5 Q. Okay. Which diagnostic devices did you  6 deal with?  7 A. Lab test.  8 Q. Okay.  9 A. Clinical laboratory test.  10 Q. Do you know then why Ms. Haas would  11 include -- let me strike that.  12 Would your role in the diagnostics  13 division create a reason for Ms. Haas to send you  14 information concerning AWP reform in late 2000 or  15 in 2001?  16 MS. TABACCHI: Object to the form.  17 THE WITNESS: No.  18 BY MS. ST. PETER-GRIFFITH:  19 Q. Do you know why you're on these e-mail?  20 A. No.  21 Q. Were you -- did you regularly receive  22 e-mail when you were an Abbott employee --</p>

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<p style="text-align: right;">Page 724</p> <p>1 MS. TABACCHI: Object --</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. -- or during your tenure at Abbott?</p> <p>4 A. On what?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. On anything.</p> <p>8 A. Oh, I get e-mails on things, yeah,</p> <p>9 sure.</p> <p>10 Q. Okay. Was the e-mail system originated</p> <p>11 or did it originally become commonplace in or</p> <p>12 around '92? Do you recall that?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: God, I have no idea.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Do you recall receiving e-mails in the</p> <p>17 '90s?</p> <p>18 A. Yes. I believe so, yes.</p> <p>19 Q. Do you know approximately how many e-</p> <p>20 mails a day you received in the '90s?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: No clue.</p>	<p style="text-align: right;">Page 726</p> <p>1 them on my system.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Okay. So you relied upon them being</p> <p>4 saved on your system as opposed to, for example,</p> <p>5 individually printing them out and saving them</p> <p>6 separately in a file?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. In a hard-copy file.</p> <p>10 A. I would have -- yeah, or I would have</p> <p>11 put them in a folder on my system.</p> <p>12 Q. Okay. You mean on your computer</p> <p>13 system?</p> <p>14 A. Yes, mm-hmm.</p> <p>15 Q. Okay. When you left home infusion, did</p> <p>16 you take your computer with you?</p> <p>17 A. No.</p> <p>18 Q. What would have happened to those e-</p> <p>19 mails that were saved in the folder on your</p> <p>20 computer system, on your PC?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I -- I don't -- I would</p>
<p style="text-align: right;">Page 725</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Okay.</p> <p>3 A. I don't, really.</p> <p>4 Q. Did you use e-mail with some -- any</p> <p>5 frequency that you can recall in the 1990s?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: I -- I suppose I did. I</p> <p>8 would think if it was available, then I would</p> <p>9 have used it, yes.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Do you recall receiving e-mails in the</p> <p>12 '90s on a regular basis or on a daily basis?</p> <p>13 A. Oh, I'm sure, I did, yeah. If it was</p> <p>14 up and running and I was on it, yes, I'm sure I</p> <p>15 did.</p> <p>16 Q. If you received a litigation hold memo,</p> <p>17 how would you retain your e-mails?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: Well, the litigation</p> <p>20 hold, typically there wouldn't have been a</p> <p>21 deletion of e-mails. There's a system that</p> <p>22 deletes e-mails, and they would have just kept</p>	<p style="text-align: right;">Page 727</p> <p>1 assume that IT would have kept them, yes.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Okay. Would you have done anything to</p> <p>4 alert in-house counsel or Ellen Klaus or anyone</p> <p>5 else responsible for the collection of documents</p> <p>6 that you might have e-mail responsive to lit hold</p> <p>7 memos saved on your PC?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: Well, they -- I believe</p> <p>10 they would have had them by then, yes.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Okay. Were they regularly downloaded</p> <p>13 and saved or provided to the in-house legal</p> <p>14 department who was collecting this information?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: Yes, I believe so. Yes.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Okay. Do you recall how that worked?</p> <p>19 A. I don't remember. It's too long ago.</p> <p>20 Q. Ma'am, do you recall at your earlier</p> <p>21 deposition when Mr. Breen was questioning you in</p> <p>22 the Texas case that he asked you a series of</p>

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<p style="text-align: right;">Page 728</p> <p>1 questions about TAP? Do you remember that?</p> <p>2 A. I remember there were questions about</p> <p>3 TAP. I don't remember the specifics.</p> <p>4 Q. Okay. What did you know in or around</p> <p>5 2001 about TAP or the TAP criminal plea or the</p> <p>6 TAP civil settlement or the TAP CIA?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I pretty much knew what</p> <p>9 was put in the newspapers.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Anything else?</p> <p>12 A. Not really, no. Not that I remember,</p> <p>13 no.</p> <p>14 Q. Did you ever discuss TAP with anyone?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: In -- in what regard?</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. In any regard.</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: Well, I -- there could</p> <p>21 have been a discussion that -- that this happened</p> <p>22 to TAP.</p>	<p style="text-align: right;">Page 730</p> <p>1 anyone the need to evaluate either Ross products</p> <p>2 division's or HPD products division's policies</p> <p>3 and practices to ensure that HPD and Ross didn't</p> <p>4 have the same problems that TAP had?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Well, I wasn't exactly</p> <p>7 sure of the same problems. You'd have to tell me</p> <p>8 what problems.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Sure. Spread marketing.</p> <p>11 A. I don't recall having discussions with</p> <p>12 Mike about spread marketing.</p> <p>13 Q. Did you ever discuss with Mike or</p> <p>14 anyone else the need to make any presentations to</p> <p>15 either the sales force or any Ross or HPD</p> <p>16 employees concerning the ramifications of TAP?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: No.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Do you recall creating any documents</p> <p>21 concerning TAP or TAP spread marketing activity</p> <p>22 or spread marketing activity in general?</p>
<p style="text-align: right;">Page 729</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Okay. What --</p> <p>3 A. I mean --</p> <p>4 Q. Who did you have that discussion with?</p> <p>5 A. Oh, I have no idea.</p> <p>6 Q. Did you ever have any discussions with</p> <p>7 Mike Tootell about TAP or the consequences of the</p> <p>8 TAP criminal plea, civil settlement, or CIA?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: There could have been a</p> <p>11 discussion where we discussed that TAP -- you</p> <p>12 know, that there was a -- that they -- I don't --</p> <p>13 I don't -- that they had a corporate integrity</p> <p>14 agreement or whatever. I don't even -- that they</p> <p>15 -- that they -- I don't even remember what</p> <p>16 happened. I -- that they settled or what. But</p> <p>17 they did pay a fine. I think I remember</p> <p>18 discussing with Mike that there was a big fine.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Do you recall ever discussing with Mike</p> <p>21 any need to evaluate -- strike that.</p> <p>22 Do you recall ever discussing with</p>	<p style="text-align: right;">Page 731</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: No.</p> <p>3 MS. ST. PETER-GRIFFITH: Mark this as</p> <p>4 the next exhibit, please.</p> <p>5 (Exhibit Tobiason 024 marked.)</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Ma'am, do you recognize this document?</p> <p>8 A. I think it -- it might -- yeah, I think</p> <p>9 I recognize it vaguely.</p> <p>10 Q. What is this document?</p> <p>11 A. Well, I think it was a -- a draft</p> <p>12 presentation.</p> <p>13 Q. Okay. And who drafted this draft</p> <p>14 presentation?</p> <p>15 A. I think Mike Tootell drafted it.</p> <p>16 Q. If Mike Tootell testified that you</p> <p>17 drafted most of this presentation, would that</p> <p>18 surprise you?</p> <p>19 MS. TABACCHI: Object to the form. Are</p> <p>20 you representing to Ms. Tobiason that that's what</p> <p>21 Mr. Tootell testified under oath?</p> <p>22 MS. ST. PETER-GRIFFITH: That's what</p>

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<p style="text-align: right;">Page 732</p> <p>1 I'm representing to Ms. Tobiason.  2 THE WITNESS: I don't remember creating  3 this document. Don't recall. But it certainly  4 has some things that relate to our -- our  5 reimbursement policy that I may have helped with.  6 BY MS. ST. PETER-GRIFFITH:  7 Q. Okay. And which portions do you think  8 you may have helped with?  9 A. The physician must determine the  10 specific patient diagnosis.  11 Q. Which page are you looking at, ma'am?  12 A. I don't know. I can't find page  13 numbers.  14 Q. Do you have a -- any --  15 A. Medical Necessity.  16 Q. What's the Abbott DOJ-E number at the  17 bottom? I know it's a small number.  18 A. 0545916.  19 Q. Okay. Is there any other document that  20 you could have -- within this presentation that  21 you could have drafted?  22 A. I -- I just don't remember. It looks</p>	<p style="text-align: right;">Page 734</p> <p>1 A. I don't remember sitting down and  2 typing these words, no.  3 Q. Which pages do you believe you may have  4 had input into?  5 A. Let's see.  6 Q. If you could identify them by the  7 Abbott DOJ-E number, that would be helpful.  8 A. Well, 0545906.  9 Q. Okay.  10 A. "Medicare is Complicated."  11 Q. You think you included that?  12 A. Well, I say that.  13 This next page was the "Always Lease  14 Pump Contract." I'm not familiar with the Ross  15 contracting arrangements.  16 Oh, page 0545911. "Can show Publicly  17 Available Reimbursement Codes and Reimbursement  18 Amounts."  19 Q. Is there anything else on this page  20 that you would have been responsible for the  21 content of?  22 MS. TABACCHI: Object to the form.</p>
<p style="text-align: right;">Page 733</p> <p>1 like some of this stuff conforms with some of the  2 -- our -- our reimbursement policy, like  3 "Encourage Customer to check with DMERC on Codes  4 and Medicare Allowances."  5 That -- let's see. Because -- I mean,  6 a lot of -- some of this stuff is very specific  7 like to Glucerna and Ross products, so that  8 wouldn't have been me.  9 The physician must determine specific.  10 Do not fill out HCFA 1500 claim form.  11 Q. Okay, ma'am. Why don't we do this.  12 A. I mean, there's -- it's just woven into  13 it, some of the things from our policy that I may  14 have just reiterated with him. I don't really  15 remember doing this -- this presentation.  16 Q. What do you recall? Let's start with  17 this. What do you recall about this draft  18 presentation?  19 A. I remember that I seemed to have  20 received it, and I think Mike sent it to me.  21 Q. Do you remember drafting any portion of  22 it at all?</p>	<p style="text-align: right;">Page 735</p> <p>1 THE WITNESS: Well, I'm not sure  2 responsible. Just explained to him what our  3 policy was.  4 BY MS. ST. PETER-GRIFFITH:  5 Q. Well, do you know what "Cannot 'Sell  6 the Spread'" means?  7 A. Well, I think this refers to that we  8 don't want to -- from like the OIG marketing  9 compliance guidelines.  10 Q. Okay.  11 A. Don't discuss the difference between  12 what the customer gets reimbursed and what they  13 pay.  14 Q. Okay. And that was a policy in 2001,  15 correct?  16 MS. TABACCHI: Object to the form.  17 THE WITNESS: When was this  18 presentation from?  19 BY MS. ST. PETER-GRIFFITH:  20 Q. 2001.  21 A. Mm-hmm. I -- I don't really remember.  22 Q. Do you recall --</p>

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<p style="text-align: right;">Page 736</p> <p>1 A. There could have been a policy. I -- I</p> <p>2 -- I don't remember.</p> <p>3 Q. Do you recall when those OIG guidelines</p> <p>4 came into existence?</p> <p>5 A. Oh, I don't. I don't remember. The</p> <p>6 early 2000s.</p> <p>7 Q. When did you first become familiar with</p> <p>8 them?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: When they were issued.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Any other pages that you believe you</p> <p>13 might have had input into the content of?</p> <p>14 A. I wouldn't have had anything on</p> <p>15 Glucerna.</p> <p>16 As we mentioned, 0545916, I might have</p> <p>17 had input into "Medical Necessity."</p> <p>18 And 0545917, "Medicare Forms."</p> <p>19 And 0545918, we always -- that we</p> <p>20 couldn't waive the copay. I think that's</p> <p>21 probably where I had input.</p> <p>22 Q. What about the sections dealing with</p>	<p style="text-align: right;">Page 738</p> <p>1 trustworthy guy?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Yes, I think -- I think</p> <p>4 Mike is honest and trust -- I think he's honest,</p> <p>5 yes.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Do you know any reason why we would</p> <p>8 have -- that we would have to doubt his testimony</p> <p>9 concerning the content of this particular</p> <p>10 document?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I'm not doubting his</p> <p>13 testimony. I -- I'm just telling you what I</p> <p>14 remember.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Is it possible that you could have</p> <p>17 written those TAP sections and you just don't</p> <p>18 remember?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 Asked and answered.</p> <p>21 THE WITNESS: I -- to the best of my</p> <p>22 recollection, I did not write those -- that TAP</p>
<p style="text-align: right;">Page 737</p> <p>1 TAP, for example, 0545903?</p> <p>2 A. No.</p> <p>3 Q. And '04? You're certain --</p> <p>4 A. I am --</p> <p>5 Q. And '05, you're certain that you didn't</p> <p>6 have any input on that?</p> <p>7 A. I -- yes.</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: As to my recollection,</p> <p>10 yes, because I wasn't even that aware of what the</p> <p>11 specifics from the TAP agreement were.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Well, if Mr. Tootell doesn't believe</p> <p>14 that he wrote it and you don't believe that you</p> <p>15 wrote it, who would have written it?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: All I can tell you is</p> <p>18 that I did not write this.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Do you know Mike Tootell?</p> <p>21 A. Yes.</p> <p>22 Q. Do you think he's an honest,</p>	<p style="text-align: right;">Page 739</p> <p>1 section.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. But is it possible that you did?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 Asked and answered.</p> <p>6 THE WITNESS: No, I don't believe it's</p> <p>7 possible.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Why not?</p> <p>10 A. I just -- I just didn't follow the</p> <p>11 specifics of the TAP. And I believe -- I -- I</p> <p>12 believe Mike wrote those.</p> <p>13 Q. Ma'am, if you'll recall at your last</p> <p>14 deposition, there was a document that you</p> <p>15 indicated you had provided to Ms. Tobiason I</p> <p>16 believe the day before the deposition. Can you</p> <p>17 confirm that --</p> <p>18 MS. ST. PETER-GRIFFITH: Actually, can</p> <p>19 we mark that as the next --</p> <p>20 MS. TABACCHI: You might want to fix --</p> <p>21 you have her providing a document to herself.</p> <p>22 MS. ST. PETER-GRIFFITH: Okay. I'm</p>

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<p style="text-align: right;">Page 740</p> <p>1 sorry.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. That you provided a document to Ms.</p> <p>4 Tabacchi. There are too many -- two Ts.</p> <p>5 What I'd like to do is mark this next</p> <p>6 exhibit. And I'm going to ask you whether or not</p> <p>7 this is the document that you provided to Ms.</p> <p>8 Tabacchi.</p> <p>9 MS. TABACCHI: And I don't want to</p> <p>10 split hairs here. But just for clarification, do</p> <p>11 you want to know whether she provided it to me</p> <p>12 specifically or to her lawyers? Because if</p> <p>13 you're asking her me specifically, we didn't have</p> <p>14 a specific exchange. I think you care about</p> <p>15 whether she gave it to counsel, right?</p> <p>16 MS. ST. PETER-GRIFFITH: Yes, although</p> <p>17 you told me that the day of her -- the second day</p> <p>18 of her deposition that she gave it to you the</p> <p>19 night before.</p> <p>20 MS. TABACCHI: Not me personally.</p> <p>21 MS. ST. PETER-GRIFFITH: Okay. Well,</p> <p>22 then perhaps I misunderstood.</p>	<p style="text-align: right;">Page 742</p> <p>1 THE VIDEOGRAPHER: We are off the</p> <p>2 record at 1:52 p.m.</p> <p>3 (Off-the-record discussion.)</p> <p>4 (Recess taken.)</p> <p>5 THE VIDEOGRAPHER: We are back on the</p> <p>6 record at 2:03 p.m.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Ms. Tobiason, let me ask you. The</p> <p>9 document that's been marked as Deposition Exhibit</p> <p>10 25 -- is that correct? Am I on the right number?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recognize that document?</p> <p>13 A. Yes.</p> <p>14 Q. What is that document?</p> <p>15 A. I believe it was a presentation that</p> <p>16 was given to the Ross sales force.</p> <p>17 Q. And at your deposition -- the last time</p> <p>18 we convened for your deposition, in my initial</p> <p>19 questions to you, I asked you whether you</p> <p>20 searched for any documents.</p> <p>21 A. Mm-hmm.</p> <p>22 Q. And you had indicated that you had and</p>
<p style="text-align: right;">Page 741</p> <p>1 If we could mark that as the next</p> <p>2 exhibit.</p> <p>3 MS. TABACCHI: I'm trying to help you</p> <p>4 out. I don't want to answer no to a question --</p> <p>5 MS. ST. PETER-GRIFFITH: Sure. I</p> <p>6 understand.</p> <p>7 (Exhibit Tobiason 025 marked.)</p> <p>8 THE WITNESS: Thank you.</p> <p>9 (Off-the-record discussion.)</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Ma'am, do you recognize this document?</p> <p>12 A. No.</p> <p>13 Q. You don't recognize this document?</p> <p>14 A. No.</p> <p>15 Q. Did you give this document to counsel</p> <p>16 for Abbott?</p> <p>17 A. Not that I recall, no.</p> <p>18 Q. Well, if --</p> <p>19 MS. TABACCHI: Do you want to go off</p> <p>20 the record or --</p> <p>21 MS. ST. PETER-GRIFFITH: Yeah, why</p> <p>22 don't we go off the record for a second.</p>	<p style="text-align: right;">Page 743</p> <p>1 that you turned over a document concerning the</p> <p>2 Ross meeting to legal counsel. Is this document</p> <p>3 the document that you found and referenced in</p> <p>4 your testimony?</p> <p>5 A. Yes. I believe so, yes.</p> <p>6 Q. Since your last deposition, have you</p> <p>7 searched for and found any other documents?</p> <p>8 A. Well, we've been through -- I've looked</p> <p>9 in my files and legal counsel's also looked at my</p> <p>10 -- at my computer. And we've turned over</p> <p>11 everything we believe relates to this.</p> <p>12 MS. ST. PETER-GRIFFITH: Okay. And,</p> <p>13 Tina, do you know whether everything that Ms.</p> <p>14 Tobiason has just referenced has been turned</p> <p>15 over?</p> <p>16 MS. TABACCHI: I am sorry. I'm not</p> <p>17 responsible for the document production. So we</p> <p>18 can ask Carol or Jason. I'm not aware of</p> <p>19 anything else, but I'm not -- really not the</p> <p>20 right person to ask.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Okay. Well, let me ask you this, Ms.</p>

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<p style="text-align: right;">Page 744</p> <p>1 Tobiason. Do you recall when those searches were 2 made and conducted? 3 A. Oh, last year sometime. 4 Q. When you say last year, do you mean 5 '07? 6 A. Yeah. Could have been '06, '7. I 7 don't remember exactly. 8 Q. Do you recall whether -- 9 A. But we went through a lot of files. 10 Q. Do you recall whether it was before or 11 after your first deposition? 12 A. I don't recall. 13 Q. Okay. So you do recognize Exhibit 25. 14 And in March when you were deposed, in response 15 to some of Mr. Breen's questions, you indicated 16 that you gave a presentation to the Ross sales 17 force. 18 A. Well, I was involved in a presentation 19 to the Ross sales force. 20 Q. Okay. Is that -- when you say you were 21 involved, does that mean that you attended and 22 were involved in the preparation of the content</p>	<p style="text-align: right;">Page 746</p> <p>1 1, 2003, safeguarding trust presentation to the 2 Ross sales force? 3 MS. TABACCHI: Object -- 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Do you recall? 6 MS. TABACCHI: -- to the form. 7 THE WITNESS: Do you remember where 8 this was? 9 BY MS. ST. PETER-GRIFFITH: 10 Q. It was in Columbus, Ohio. 11 A. I believe so. I can't remember totally 12 100 percent, but I believe so. 13 Q. Okay. Well, let me -- let me ask you 14 this. What is the safeguarding trust program or 15 presentation? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I just -- I would have 18 just had a piece of it. I don't really know how 19 to describe the safeguarding trust. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Well, is it -- was it a presentation 22 that was put together in furtherance of the -- of</p>
<p style="text-align: right;">Page 745</p> <p>1 but that the actual presentation was -- was 2 delivered by other people? 3 A. I think I was involved in the content, 4 and I also was available for Q&amp;A, but I believe 5 somebody else gave this presentation. I don't 6 remember giving this specific presentation. 7 MS. ST. PETER-GRIFFITH: If you can 8 mark this as the next exhibit. 9 (Exhibit Tobiason 026 marked.) 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Ma'am, have you ever seen this document 12 before that's been marked as Exhibit 26? 13 A. I haven't seen this, no. 14 Q. Okay. If I represent to you that this 15 is a document that came from the HHS OIG files 16 and it was represented to HHS OIG as being a 17 transcript of the October 1, 2003, safeguarding 18 trust presentation, does that help familiarize 19 you with this document? 20 A. Yes, I remember Gary Flynn did speak. 21 Q. Okay. And was the -- the meeting that 22 you assisted with in 2003, was that the October</p>	<p style="text-align: right;">Page 747</p> <p>1 Abbott's obligations under the corporate 2 integrity agreement? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: Well, I believe so. 5 There were training requirements, as I remember. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. What was your involvement in compliance 8 issues for the Ross CIA? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: Hmm. Well, I wasn't 11 responsible for adhering to the Ross CIA or -- or 12 specifically developing, deciding on the 13 training. I -- I was responsible for working on 14 reimbursement policies, helping with that, and 15 also ensuring that -- you know, that we -- for 16 reviewing materials to make sure that we adhered 17 to those guidelines. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Adhered to what guidelines? 20 A. The reimbursement policy. 21 Q. Other than reimbursement policies, did 22 you review any other policies or initiatives</p>

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<p style="text-align: right;">Page 748</p> <p>1 developed in conformity with the requirements of 2 the Ross CIA? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: I'm not sure what 5 specifically. I know that at times I was in 6 meetings where we'd discuss other policies, but 7 they were general OEC policies. They may not 8 have been directly related to the Ross CIA. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Well, if Ms. Tomlinson testified that 11 you reviewed all of the policies and the 12 procedures that they put together before they 13 were submitted to HHS OIG, would that surprise 14 you? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: No. They were 17 reimbursement policies. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Just reimbursement policies? 20 A. Yes. 21 Q. Were there any other policies or 22 procedures that you reviewed incident to the Ross</p>	<p style="text-align: right;">Page 750</p> <p>1 were you responsible in any way for its content? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: I believe I reviewed it. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Okay. Who put it together? Who 6 drafted it? 7 MS. TABACCHI: Object to the form. 8 THE WITNESS: I -- I think it might 9 have been Julie, but I'm -- I don't want to -- I 10 just don't remember exactly. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. Well, other than Ms. Tomlinson, do you 13 know of anyone else who would have been 14 responsible for developing these materials? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: Well, I -- I really don't 17 know. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Well, who do you recall being 20 responsible or involved with the development of 21 reimbursement policies and procedures incident to 22 the Ross CIA?</p>
<p style="text-align: right;">Page 749</p> <p>1 CIA? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: Not that I'm aware of, 4 no. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Do you recall exactly which policies or 7 procedures pursuant to the Ross CIA you were 8 responsible for reviewing or developing? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: Well, if they were on the 11 -- involved with the reimbursement, I -- they 12 probably were. I did review them. 13 BY MS. ST. PETER-GRIFFITH: 14 Q. Anything else? 15 A. Not -- not that I remember. 16 Q. Now, the document that was marked as 17 Exhibit 25, did you write that? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: When you say write, do 20 you mean -- 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Did you draft any portion of it, or</p>	<p style="text-align: right;">Page 751</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: Well, it would have been 3 the divisions, legal, the OEC department. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Who within either the OEC department, 6 legal, or the divisions may have also had a hand 7 in developing Exhibit 25? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I would think those were 10 the ones. But there could have been others. I 11 just don't know. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. But who -- who in terms of actual 14 individuals, the names of the actual individuals 15 within those particular areas that may have been 16 responsible for helping develop Exhibit 25? 17 MS. TABACCHI: Object to the form. 18 THE WITNESS: Names? Well, Julie. I 19 don't remember who was legal. I don't remember 20 the legal counsel. And I don't remember who else 21 at OEC at Ross, or if it was OEC at Abbott. I 22 just don't remember who was involved.</p>

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<p style="text-align: right;">Page 752</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Other than assisting with the review of</p> <p>3 reimbursement policies and procedures, did you</p> <p>4 have any other role in working on or ensuring</p> <p>5 compliance with the requirements of the Ross CIA?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Could you repeat that</p> <p>8 question?</p> <p>9 MS. ST. PETER-GRIFFITH: Sure.</p> <p>10 Could you read it back, ma'am?</p> <p>11 (Record read.)</p> <p>12 THE WITNESS: My responsibility was</p> <p>13 solely with reimbursement.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Okay. So the answer is no?</p> <p>16 A. I guess, yeah. If I can understand the</p> <p>17 question, yeah.</p> <p>18 Q. Well, let me rephrase it. Other than</p> <p>19 working on reimbursement policies and procedures,</p> <p>20 what else did you work on in furtherance of the</p> <p>21 Ross CIA?</p> <p>22 A. Not -- nothing else to my knowledge,</p>	<p style="text-align: right;">Page 754</p> <p>1 compare Exhibit 27 where I've marked to Exhibit</p> <p>2 25. And can you just confirm that the content of</p> <p>3 Exhibit 25 is the same as the marked -- beginning</p> <p>4 on the marked page of Exhibit 27?</p> <p>5 MS. TABACCHI: You want her -- you want</p> <p>6 her to compare every page of 25 and match it up?</p> <p>7 MS. ST. PETER-GRIFFITH: I just want</p> <p>8 her to see if for her -- to her satisfaction</p> <p>9 whether they appear to be the same content.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Okay. Ma'am, I'm going to represent to</p> <p>13 you that Exhibit 27 is a copy of the Safeguarding</p> <p>14 Trust PowerPoint presentation that was submitted</p> <p>15 to HHS OIG as part of the materials provided to</p> <p>16 HHS OIG concerning Abbott's compliance with the</p> <p>17 Ross CIA.</p> <p>18 To your recollection, was Exhibit 25,</p> <p>19 which you indicated you participated in</p> <p>20 reviewing, included as part of the presentation</p> <p>21 that is represented in Exhibit 27?</p> <p>22 MS. TABACCHI: Object to the form.</p>
<p style="text-align: right;">Page 753</p> <p>1 no.</p> <p>2 MS. ST. PETER-GRIFFITH: If we can mark</p> <p>3 this as the next exhibit.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. And, ma'am, I've tagged the page that I</p> <p>6 --</p> <p>7 A. Mm-hmm.</p> <p>8 Q. -- would like you to turn to.</p> <p>9 A. Okay.</p> <p>10 MS. ST. PETER-GRIFFITH: I understand</p> <p>11 it's a thick document.</p> <p>12 Oh, my gosh, Tina. I think I just gave</p> <p>13 you mine.</p> <p>14 MS. TABACCHI: Well, I don't want</p> <p>15 yours. It would have your secret notes on it.</p> <p>16 MS. ST. PETER-GRIFFITH: It's actually</p> <p>17 my secret folds.</p> <p>18 MS. TABACCHI: 27?</p> <p>19 MS. ST. PETER-GRIFFITH: 27, yes.</p> <p>20 (Exhibit Tobiason 027 marked.)</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. And, ma'am, what I'd like you to do is</p>	<p style="text-align: right;">Page 755</p> <p>1 THE WITNESS: Well, it appears to be,</p> <p>2 yes.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Do you recall when the presentation</p> <p>5 that is identified as Exhibit 27 was made at the</p> <p>6 Safeguarding Trust October 1, 2003, meeting?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: No, I don't remember.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Do you recall fielding any questions</p> <p>11 concerning reimbursement matters at the October</p> <p>12 1, 2003, meeting?</p> <p>13 A. No, I don't.</p> <p>14 Q. Do you recall why you didn't identify</p> <p>15 for Mr. Breen when he first asked you about this</p> <p>16 meeting in 2003, why you didn't identify for him</p> <p>17 that it was a Ross CIA meeting?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: I may not put -- I just</p> <p>20 know it was a Ross training meeting.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Okay. And it pertained to Medicare,</p>

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<p style="text-align: right;">Page 756</p> <p>1 correct?</p> <p>2 A. Well --</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: -- it was a Ross training</p> <p>5 meeting. I -- I didn't -- I probably didn't -- I</p> <p>6 know they did a Ross training meeting. That's</p> <p>7 what I -- I -- that's the way I think of it.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Okay. But the Ross training dealt with</p> <p>10 Medicare and Medicaid, fraud and abuse, the anti-</p> <p>11 kickback statute, the False Claims Act, et</p> <p>12 cetera. Correct?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: Well, I remember being</p> <p>15 there for this presentation. I'm not sure that I</p> <p>16 was there for the other presentations. So I</p> <p>17 remember this presentation.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Okay. But this presentation that you</p> <p>20 helped work on dealt with the anti-kickback</p> <p>21 statute, the False Claims Act, and Medicare and</p> <p>22 Medicaid fraud and abuse in the reimbursement</p>	<p style="text-align: right;">Page 758</p> <p>1 Q. What are your responsibilities in the</p> <p>2 ethics and compliance department dealing with</p> <p>3 reimbursement?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Well, I think I -- at</p> <p>6 that point I helped develop our reimbursement</p> <p>7 policy. If questions came up involving some</p> <p>8 specific issues in Medicare, I would try to -- I</p> <p>9 could research them or attempt to answer them.</p> <p>10 I also worked on trying to secure --</p> <p>11 worked with the divisions on coverage and coding</p> <p>12 for a number of our products, especially devices.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Anything else?</p> <p>15 A. Oh, I would review -- if there were</p> <p>16 materials dealing with reimbursement, I was</p> <p>17 responsible for reviewing them. For example, if</p> <p>18 they were issuing CPT codes, I would go through</p> <p>19 to make sure that the CPT codes looked correct.</p> <p>20 If there was -- if they wanted to issue a</p> <p>21 publicly available policy, I would make sure that</p> <p>22 it was the most recent coverage policy from the</p>
<p style="text-align: right;">Page 757</p> <p>1 context. Is that correct?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Well, it -- it's -- it --</p> <p>4 I -- I view it as dealing with reimbursement</p> <p>5 information and support. And there are</p> <p>6 references to the anti-kickback statute and the</p> <p>7 False Claim Act. I don't know exactly what was</p> <p>8 specifically discussed about them.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Well, do you recall working on those</p> <p>11 materials in -- in preparing the presentation?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: I believe I reviewed the</p> <p>14 materials, yes.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Okay. And why did you review the</p> <p>17 materials?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: I -- I just -- because I</p> <p>20 was in the ethics and compliance department and I</p> <p>21 dealt with reimbursement issues.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 759</p> <p>1 carriers, things like that.</p> <p>2 Q. Do you recall who was a covered person</p> <p>3 under the Ross CIA?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Covered person? Covered</p> <p>6 person? No.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Do you recall whether you were?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: You know, I don't know.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Did anyone ever tell you that you were</p> <p>13 a covered person under the Ross CIA?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I don't know. They may</p> <p>16 have.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Well, who within the Ross ethics -- or</p> <p>19 who within Abbott ethics and compliance was</p> <p>20 responsible for tracking who was a covered person</p> <p>21 under the CIA?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 760</p> <p>1 THE WITNESS: I don't know.  2 MS. ST. PETER-GRIFFITH: If you could  3 mark this as the next exhibit, please.  4 (Exhibit Tobiason 028 marked.)  5 BY MS. ST. PETER-GRIFFITH:  6 Q. Before you take a look at that --  7 A. Mm-hmm.  8 Q. -- Ms. Tobiason, I actually have a  9 couple of questions. When Mr. Breen questioned  10 you in March about presentations that you had  11 made concerning Medicare or Medicaid, you'd  12 referenced that you'd made a -- you'd gone to  13 Puerto Rico to give a presentation, correct?  14 A. Yes.  15 Q. Was that also a presentation that was  16 made incident to the Ross CIA?  17 A. No.  18 MS. TABACCHI: Object to the form.  19 THE WITNESS: Oh, sorry. Sorry, Tina.  20 BY MS. ST. PETER-GRIFFITH:  21 Q. Did you give any presentations in  22 Puerto Rico incident to the Ross CIA?</p>	<p style="text-align: right;">Page 762</p> <p>1 Medicaid fraud and abuse, correct?  2 MS. TABACCHI: Object to the form.  3 THE WITNESS: Well, this policy deals  4 with that they'll update the code.  5 BY MS. ST. PETER-GRIFFITH:  6 Q. Okay. And they'll update the code to  7 include the additional materials that are set  8 forth in the policy, right?  9 MS. TABACCHI: Object to the form.  10 THE WITNESS: Attachment A. Well, it  11 appears to apply to the code. I don't see  12 Attachment A, so I assume that's it.  13 BY MS. ST. PETER-GRIFFITH:  14 Q. Are you familiar with this policy,  15 ma'am?  16 MS. TABACCHI: Object to the form.  17 THE WITNESS: Are -- are you referring  18 to this policy or this (indicating)? I'm  19 confused.  20 BY MS. ST. PETER-GRIFFITH:  21 Q. I'm referring to this entire package,  22 Exhibit 28.</p>
<p style="text-align: right;">Page 761</p> <p>1 MS. TABACCHI: Object to the form.  2 THE WITNESS: No.  3 BY MS. ST. PETER-GRIFFITH:  4 Q. Ma'am, you've been handed what's been  5 marked as Exhibit 28. Do you recognize this  6 document?  7 A. Hmm. Yes, I think this was a policy  8 that was created.  9 Q. Did you participate in the creation of  10 that policy?  11 MS. TABACCHI: Object to the form.  12 THE WITNESS: I don't remember  13 participating in it.  14 BY MS. ST. PETER-GRIFFITH:  15 Q. Is this a policy that applied to -- or  16 applied Abbott-wide?  17 A. It says it applies to Abbott's ethics  18 compliance program globally.  19 Q. Okay. So did it apply Abbott -- does  20 that mean it applied Abbott-wide?  21 A. I would think so, yes.  22 Q. And this policy deals with Medicare and</p>	<p style="text-align: right;">Page 763</p> <p>1 A. Well, this first is a policy on  2 updating the code.  3 Q. Okay. And does the September 8th,  4 2003, document that begins on the third page of  5 Exhibit 28, does that reflect how the code is  6 going to be updated?  7 A. Well, that's what appears, yes.  8 Q. And my question to you, ma'am, is, are  9 you familiar with this?  10 MS. TABACCHI: Object to the form.  11 THE WITNESS: Yes.  12 BY MS. ST. PETER-GRIFFITH:  13 Q. Ma'am, to your knowledge, did Abbott  14 undertake any initiative to evaluate whether its  15 policies, practices, and procedures for the  16 Hospital Products division complied with the  17 policy outlined in Exhibit 28?  18 MS. TABACCHI: Object to the form.  19 THE WITNESS: What's 28, this  20 (indicating)?  21 BY MS. ST. PETER-GRIFFITH:  22 Q. This.</p>

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<p style="text-align: right;">Page 764</p> <p>1 A. Oh, you mean about the code?</p> <p>2 Q. The provisions that are set forth in</p> <p>3 the code, ma'am.</p> <p>4 MS. TABACCHI: I'm sorry. Would you</p> <p>5 mind rereading the question or -- I'm not sure</p> <p>6 what the question is.</p> <p>7 (Record read.)</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I don't -- to be honest</p> <p>10 with you, I don't know if this was the -- a broad</p> <p>11 Abbott policy or just a -- refers to Ross. So I</p> <p>12 don't know if this applies to hospital products,</p> <p>13 but that's -- because it talks here about the --</p> <p>14 the covered persons and corporate integrity</p> <p>15 agreement. So I don't know if this -- this was</p> <p>16 used with hospital products or not. I just don't</p> <p>17 know. I wouldn't be -- I wouldn't know that</p> <p>18 answer.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Okay. If you look at page 3 of this</p> <p>21 document.</p> <p>22 A. Page 3. Yeah. Well --</p>	<p style="text-align: right;">Page 766</p> <p>1 believe that this policy was not implemented?</p> <p>2 A. Oh, I have no reason to --</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: I -- I have no reason to</p> <p>5 believe it wasn't.</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Okay. And my question to you is, are</p> <p>8 you aware of any initiative to evaluate whether</p> <p>9 the Hospital Products division complied with this</p> <p>10 particular policy?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: Well, this was sent to</p> <p>13 officers, employees, and agents of Abbott</p> <p>14 Laboratories. So my assumption would be that</p> <p>15 they were expected to comply with it.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Okay. But was there any evaluation</p> <p>18 done as to whether or not Abbott HPD was already</p> <p>19 conforming to this policy at the time that this</p> <p>20 particular policy was implemented?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I wouldn't know that</p>
<p style="text-align: right;">Page 765</p> <p>1 Q. It references, "The purpose of this</p> <p>2 memorandum is to update Abbott's Code of Business</p> <p>3 Conduct." Do you see that?</p> <p>4 A. I -- I do see that in this document</p> <p>5 (indicating). I don't see it in the other</p> <p>6 document.</p> <p>7 Q. Well, do you see under Purpose on the</p> <p>8 first page of this memo?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. "This Corporate Office of Ethics and</p> <p>11 Compliance Procedure sets forth the Abbott</p> <p>12 Laboratories Code of Business Conduct."</p> <p>13 Do you see that?</p> <p>14 A. I do, on this document.</p> <p>15 Q. Well, do you -- I mean, ma'am, I'll</p> <p>16 represent to you that I personally photocopied</p> <p>17 these pages together from the HHS OIG file. They</p> <p>18 are a document that is together. At least they</p> <p>19 were provided to HHS OIG as a document that was</p> <p>20 together by Abbott.</p> <p>21 A. Well, if you say so. Okay.</p> <p>22 Q. Okay? Do you have any reason to</p>	<p style="text-align: right;">Page 767</p> <p>1 answer.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Were you at all involved in any</p> <p>4 evaluation of Abbott HPD's policies, practices,</p> <p>5 and procedures concerning its compliance with</p> <p>6 federal and state fraud and abuse laws?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. At any time.</p> <p>10 A. If it dealt with our reimbursement</p> <p>11 policy, I was involved in -- as -- with all the</p> <p>12 divisions on reimbursement policies.</p> <p>13 Q. Okay. What reimbursement policies were</p> <p>14 you involved with pertaining to Medicaid and</p> <p>15 Medicare fraud and abuse?</p> <p>16 A. I was respon --</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I'm sorry.</p> <p>19 I was involved with our policy that we</p> <p>20 created in OEC on reimbursement information and</p> <p>21 support.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>

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<p style="text-align: right;">Page 768</p> <p>1 Q. Okay. Did that pertain to Medicaid and</p> <p>2 Medicare fraud and abuse?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: It was pertaining to the</p> <p>5 information we provided to customers about</p> <p>6 reimbursement and the support services we</p> <p>7 offered. Whether that was involved with the</p> <p>8 fraud and abuse, I -- you'd have to ask legal.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Okay. Well, did you work with legal on</p> <p>11 the policies?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. What do you recall about the content</p> <p>16 concerning Medicaid and Medicare fraud and abuse?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: I don't remember specific</p> <p>19 discussions about how it connected to fraud and</p> <p>20 abuse. But I -- that -- I -- I'm not as familiar</p> <p>21 with the fraud and abuse statute as -- I'm just -</p> <p>22 - I'm not a lawyer.</p>	<p style="text-align: right;">Page 770</p> <p>1 MS. TABACCHI: -- communications</p> <p>2 between you and the lawyers.</p> <p>3 MS. ST. PETER-GRIFFITH: Okay. In</p> <p>4 making that instruction, are you making a</p> <p>5 representation at this time, Tina, that Abbott</p> <p>6 does not intend to rely upon an advice-of-counsel</p> <p>7 defense in this case?</p> <p>8 MS. TABACCHI: I don't understand what</p> <p>9 your question is. I'm just trying to make sure</p> <p>10 that we don't waive privilege as to some specific</p> <p>11 communication that she had with a lawyer. It</p> <p>12 sounded like that's where you were headed with</p> <p>13 her.</p> <p>14 MS. ST. PETER-GRIFFITH: Well, to the</p> <p>15 extent that the development of a policy or</p> <p>16 procedure with Abbott counsel might be relied</p> <p>17 upon at a later point in time as a defense in</p> <p>18 this matter, I think I've got the right to</p> <p>19 inquire as to the substance of those</p> <p>20 communications unless you're willing to represent</p> <p>21 to me right now that you don't -- that Abbott</p> <p>22 does not intend to assert an advice-of-counsel</p>
<p style="text-align: right;">Page 769</p> <p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Okay. But as a reimbursement</p> <p>3 individual, did you have concerns about ensuring</p> <p>4 that the company that you worked for with regard</p> <p>5 to reimbursement practices and procedures</p> <p>6 complied with federal and state Medicaid and</p> <p>7 Medicare fraud and abuse statutes?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I was concerned that</p> <p>10 Abbott comply with all regulations.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Okay. And what did you do to ensure</p> <p>13 that they were in compliance with federal and</p> <p>14 state Medicare and Medicaid fraud and abuse</p> <p>15 statutes?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: I -- we -- we discussed</p> <p>18 with legal certain things that we felt were</p> <p>19 appropriate and not appropriate.</p> <p>20 MS. TABACCHI: I want to just caution</p> <p>21 the witness not to reveal the substance of any --</p> <p>22 THE WITNESS: Right.</p>	<p style="text-align: right;">Page 771</p> <p>1 defense.</p> <p>2 MS. TABACCHI: I don't understand your</p> <p>3 question.</p> <p>4 If you have a question for Ms.</p> <p>5 Tobiason, go ahead.</p> <p>6 MS. ST. PETER-GRIFFITH: Are you</p> <p>7 prepared to make that representation, Tina?</p> <p>8 MS. TABACCHI: No, I'm not making that</p> <p>9 representation.</p> <p>10 MS. ST. PETER-GRIFFITH: But you're</p> <p>11 instructing her not to answer --</p> <p>12 MS. TABACCHI: I didn't instruct her</p> <p>13 not to answer.</p> <p>14 MS. ST. PETER-GRIFFITH: Could you read</p> <p>15 back the question, please?</p> <p>16 (Record read.)</p> <p>17 THE WITNESS: That was the legal</p> <p>18 responsibility.</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. When you say that was the legal</p> <p>21 responsibility, what do you mean? What do you</p> <p>22 mean? That was the responsibility of the legal</p>

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<p style="text-align: right;">Page 772</p> <p>1 department?</p> <p>2 A. Well, if there was a policy written</p> <p>3 that they would review it to make sure it was in</p> <p>4 compliance with the statutes.</p> <p>5 Q. What discussions did you have with</p> <p>6 counsel concerning that?</p> <p>7 MS. TABACCHI: I'm --</p> <p>8 THE WITNESS: I don't think I can</p> <p>9 answer that.</p> <p>10 MS. ST. PETER-GRIFFITH: Are you</p> <p>11 instructing her not to answer?</p> <p>12 MS. TABACCHI: I'd like to take a</p> <p>13 break.</p> <p>14 MS. ST. PETER-GRIFFITH: Okay. Why</p> <p>15 don't we take a break. We've got to change the</p> <p>16 tape anyway.</p> <p>17 THE VIDEOGRAPHER: We are off the</p> <p>18 record at 2:37 p.m. with the end of Tape No. 3.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: We are back on the</p> <p>21 record at 2:59 p.m. with the start of Tape No. 4.</p> <p>22 MS. ST. PETER-GRIFFITH: I'd like to</p>	<p style="text-align: right;">Page 774</p> <p>1 THE WITNESS: AWP spreads. I don't</p> <p>2 recall any discussions.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Were you ever advised that maintaining</p> <p>5 high AWP spreads may contravene the False Claims</p> <p>6 Act or anti-kickback statutes?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 I'm going to caution the witness not to</p> <p>9 reveal the substance of communications with</p> <p>10 counsel.</p> <p>11 THE WITNESS: I'm not aware of any</p> <p>12 conversations, no.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Were you aware of any obligation to</p> <p>15 report AWP spreads?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: AWP spreads. No.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. What was your understanding of Abbott's</p> <p>20 respons -- Abbott HPD's responsibility to report</p> <p>21 -- or strike that.</p> <p>22 What was your understanding of whether</p>
<p style="text-align: right;">Page 773</p> <p>1 ask the court reporter to just identify where we</p> <p>2 last left off.</p> <p>3 (Record read.)</p> <p>4 MS. ST. PETER-GRIFFITH: Where do we</p> <p>5 stand, Tina? May Ms. Tobiason answer the</p> <p>6 question?</p> <p>7 THE WITNESS: Repeat the question.</p> <p>8 (Record read.)</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: About that. Well, I</p> <p>11 don't remember any specific conversations with</p> <p>12 counsel about fraud and abuse. We were creating</p> <p>13 a policy regarding reimbursement information and</p> <p>14 support.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Okay. What do you recall about your</p> <p>17 conversation -- or let me ask you. Did you have</p> <p>18 any conversations with anyone at Abbott about</p> <p>19 whether in formulating these reimbursement</p> <p>20 policies Abbott needed to look at or disclose its</p> <p>21 AWP spreads, either historically or current?</p> <p>22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 775</p> <p>1 Abbott had any duties with regard to its price</p> <p>2 reporting?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: Price reporting? I don't</p> <p>5 know what you mean. Price reporting to whom?</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. Price reporting to either Medicaid or</p> <p>8 Medicare or to the pricing compendia.</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: Well, reporting to the</p> <p>11 pricing compendia whatever they did, that wasn't</p> <p>12 my responsibility. So I didn't even know what</p> <p>13 they reported.</p> <p>14 And in terms of other entities, I'm not</p> <p>15 aware of any issues.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Did you have any understanding as to</p> <p>18 whether reporting to the pricing compendia may</p> <p>19 have impacted reimbursement on Abbott HPD</p> <p>20 products or drugs?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 I'm sorry. Would you mind reading that</p>

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<p style="text-align: right;">Page 776</p> <p>1 back? I'm not sure I heard the last part.  2 (Record read.)  3 MS. TABACCHI: Object to the form.  4 THE WITNESS: Well, my understanding  5 was the pricing compendia set AWP, and in certain  6 cases we were required to -- we -- payors may  7 have had requirements for us to bill AWP. So  8 there would have been -- they would have been  9 reimbursed off of some methodology of AWP which  10 was set by the drug databases.  11 BY MS. ST. PETER-GRIFFITH:  12 Q. What was your understanding of how list  13 price reporting by Abbott HPD impacted the  14 calculation of AWP?  15 MS. TABACCHI: Object to the form.  16 THE WITNESS: I didn't do that. I  17 don't know.  18 BY MS. ST. PETER-GRIFFITH:  19 Q. Did you have any understanding about  20 AWP or how it was calculated?  21 MS. TABACCHI: Object to the form.  22 This is also duplicative of prior testimony.</p>	<p style="text-align: right;">Page 778</p> <p>1 MS. TABACCHI: Object to the form.  2 THE WITNESS: No.  3 BY MS. ST. PETER-GRIFFITH:  4 Q. Did you ever hear that?  5 MS. TABACCHI: Object to the form.  6 THE WITNESS: Well, I heard that when  7 it came out in some newspaper articles.  8 BY MS. ST. PETER-GRIFFITH:  9 Q. When was that?  10 A. Oh, I don't know. Recent. It was a  11 few years ago. I remember a New York Times  12 article on it.  13 Q. Okay. And did that raise any concerns  14 for you?  15 MS. TABACCHI: Object to the form.  16 THE WITNESS: I -- that would be  17 speculation on my part. It didn't raise any  18 concerns, no.  19 BY MS. ST. PETER-GRIFFITH:  20 Q. Did you as an Abbott HPD employee have  21 any concerns about whether your division was  22 engaging in the same conduct for which TAP may</p>
<p style="text-align: right;">Page 777</p> <p>1 THE WITNESS: Mm-hmm. Well, I know  2 that we did do some reporting to drug databases.  3 There was some methodology the drug databases  4 employed to set AWP. Whether it was based on  5 that or other -- or other -- I think they also  6 did surveys. I -- I don't really know how they  7 set their prices. That was really their  8 decision. I mean, their AWP, they -- they made  9 that decision.  10 BY MS. ST. PETER-GRIFFITH:  11 Q. Do you have an understanding as to  12 whether or not Abbott's reporting of list prices  13 that exceeded their actual contract prices of  14 sometimes 100, 200, 300, 1000 percent might have  15 impacted the calculation of AWP?  16 MS. TABACCHI: Object to the form.  17 THE WITNESS: I -- I have no idea what  18 our -- our contract prices were.  19 BY MS. ST. PETER-GRIFFITH:  20 Q. Did you have any understanding as to  21 whether or not Abbott's HPD products and drugs  22 might have had high spreads?</p>	<p style="text-align: right;">Page 779</p> <p>1 have gotten into trouble?  2 MS. TABACCHI: Object to the form.  3 THE WITNESS: Well, I'm not really  4 clear on what TAP got in trouble for. So I never  5 made a connection between TAP and hospital  6 products.  7 MS. ST. PETER-GRIFFITH: If we can mark  8 this next exhibit, please.  9 (Exhibit Tobiason 029 marked.)  10 BY MS. ST. PETER-GRIFFITH:  11 Q. Ma'am, do you recognize this document?  12 A. I don't remember it specifically, no.  13 Q. Is it an e-mail that you drafted?  14 A. It appears to be.  15 Q. Do you recall a PhRMA letter that you  16 provided commentary on?  17 MS. TABACCHI: Object to the form.  18 THE WITNESS: Well, I'm not sure it's a  19 PhRMA letter. There's a note here that says  20 "Amgen letter."  21 BY MS. ST. PETER-GRIFFITH:  22 Q. Okay. Well, it says "PhRMA," "Amgen."</p>

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<p style="text-align: right;">Page 780</p> <p>1 Let me ask you, do you recognize that</p> <p>2 handwriting?</p> <p>3 A. No.</p> <p>4 Q. Do you know what letter this particular</p> <p>5 e-mail that you drafted to Adele Weinstein is</p> <p>6 referencing?</p> <p>7 A. No.</p> <p>8 Q. Do you see where it says on the subject</p> <p>9 line, "Thoughts on PhRMA letter"? At the top.</p> <p>10 A. Yeah, I see that.</p> <p>11 Q. Okay. Does that refresh your</p> <p>12 recollection as to whether you might have been</p> <p>13 providing commentary on a PhRMA letter?</p> <p>14 A. I -- I don't know. I don't know if it</p> <p>15 was a PhRMA letter or an Amgen letter.</p> <p>16 Q. Do you recall a PhRMA letter or an</p> <p>17 Amgen letter?</p> <p>18 A. No.</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: Sorry. Sorry, Tina.</p> <p>21 No.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 782</p> <p>1 Q. Do you know what that means or what you</p> <p>2 meant when you wrote that?</p> <p>3 A. I think that at this point we were</p> <p>4 saying that we needed to have a different</p> <p>5 methodology for reimbursement.</p> <p>6 Q. Why?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: You know, I -- I don't</p> <p>9 really know why. I just know that we were moving</p> <p>10 towards a different methodology for payment for -</p> <p>11 - for Medicare.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. Was that something that you supported?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I think it was just what</p> <p>16 it is.</p> <p>17 MS. ST. PETER-GRIFFITH: Can you mark</p> <p>18 the next exhibit?</p> <p>19 (Exhibit Tobiason 030 marked.)</p> <p>20 THE WITNESS: Thank you.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Ma'am, do you recognize these -- these</p>
<p style="text-align: right;">Page 781</p> <p>1 Q. Do you recall anything about providing</p> <p>2 commentary on either a PhRMA or an Amgen letter?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Do you know why you might have felt</p> <p>7 that the mom -- the letter which appeared to be</p> <p>8 "Mom and apple pie" was disturbing?</p> <p>9 A. Well, it says here, "The letter's main</p> <p>10 point appears to be lobbying against the Average</p> <p>11 selling price provision in the house bill."</p> <p>12 Q. Okay. And why would that be</p> <p>13 disturbing?</p> <p>14 A. I think that at this point we were</p> <p>15 supporting -- and -- and I'm not the person who</p> <p>16 was doing the -- the policy. But I think we were</p> <p>17 supporting an average selling price provision.</p> <p>18 Q. Okay. And at the end of the first</p> <p>19 paragraph it says, "And, as you know, we are</p> <p>20 against an AWP based methodology."</p> <p>21 Do you see that?</p> <p>22 A. I see that.</p>	<p style="text-align: right;">Page 783</p> <p>1 documents that comprise Composite Exhibit 30?</p> <p>2 A. I don't remember this, but --</p> <p>3 specifically, no.</p> <p>4 Q. Well, are you familiar with the subject</p> <p>5 matter of this series of e-mails?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What is the subject matter of</p> <p>8 this series of e-mails?</p> <p>9 A. I think there's a couple. One is the -</p> <p>10 - that ESRD drugs would be paid at some sort of</p> <p>11 ASP and -- and also what would be the methodology</p> <p>12 for ASP.</p> <p>13 Q. Okay. And what is ASP?</p> <p>14 A. Average selling price.</p> <p>15 Q. Okay. Is -- does this pertain to some</p> <p>16 of the reform that was referenced in Exhibit 29?</p> <p>17 A. Where is 29?</p> <p>18 Q. 29 was the one that you just reviewed.</p> <p>19 It's the e-mail concerning the PhRMA/Amgen.</p> <p>20 A. Yes. Appears to.</p> <p>21 Q. Ma'am, do you have any recollection as</p> <p>22 to what your involvement was on the commentary</p>

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<p style="text-align: right;">Page 784</p> <p>1 for the proposed rule on reforming Medicare Part 2 D drug payments? 3 A. Part D? 4 Q. Part B. 5 A. Oh, Part B. I don't remember if we -- 6 we commented on this. I do know that our -- I 7 think one of our main concerns is that during the 8 ASP calculation that the calculation be done 9 correctly. 10 Q. Okay. And what do you mean by 11 correctly? 12 A. Well, that it -- it gets to the true 13 average selling price and as CMS has issued a 14 number of rules since then, you know, refining 15 the reporting requirements. 16 Q. Okay. And how -- how did Abbott 17 contend was the proper way to get at the correct 18 average selling price? 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: Well, we believed that it 21 should include all the correct discounts. There 22 was questions about the timing of taking rebates,</p>	<p style="text-align: right;">Page 786</p> <p>1 A. Well, it appears to be our final 2 comments on CMS's proposed AWP reform rule. 3 Q. And there's an e-mail from Adele 4 Witenstein. Do you see that? 5 A. Yes. 6 Q. And who is Ms. Witenstein? 7 A. She's in our federal government affairs 8 office. 9 Q. Okay. And she's sending a copy, and 10 you're the first addressee on the To list -- are 11 you not? -- for this e-mail. 12 A. I'm on the list, yes. 13 Q. Do you have any doubts that you 14 received this document? 15 A. I assume I received it, yes. 16 Q. Why did you receive -- do you know why 17 she sent you this document? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: Well, because I was 20 involved with in OEC on reimbursement. I don't 21 know if this is when I moved over to government 22 affairs yet or not. I'm not sure. I don't</p>
<p style="text-align: right;">Page 785</p> <p>1 and CMS has acknowledged that and correct -- and 2 -- and issued rules defining like a 12-month 3 rolling average to make sure that there's not 4 swings in ASPs. I mean, there's been a lot of 5 back and forth to try and refine it to get the 6 most correct ASP possible. 7 MS. ST. PETER-GRIFFITH: Could you mark 8 this as the next exhibit, please? 9 BY MS. ST. PETER-GRIFFITH: 10 Q. And, ma'am, I'm just going to ask you 11 generally about your recollection of -- 12 A. Mm-hmm. 13 Q. -- of receiving this particular 14 document. It's somewhat of a lengthy document. 15 A. Sure. 16 (Exhibit Tobiason 031 marked.) 17 BY MS. ST. PETER-GRIFFITH: 18 Q. Ma'am, do you recognize what's been 19 handed to you as Exhibit 31? 20 A. Yes. 21 Q. And can you tell us, what is this 22 document?</p>	<p style="text-align: right;">Page 787</p> <p>1 remember the date. 2 MS. ST. PETER-GRIFFITH: If we can mark 3 this as the next exhibit, please. 4 (Exhibit Tobiason 032 marked.) 5 THE WITNESS: Thank you. 6 MS. ST. PETER-GRIFFITH: Record will 7 reflect the witness has been handed Exhibit 32. 8 THE WITNESS: Mm-hmm. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. And, ma'am, do you recognize this 11 document? 12 A. No, I don't remember it. 13 Q. Does it appear to be another e-mail 14 from Ms. Weinstein addressed to you? 15 MS. TABACCHI: Object to the form. 16 THE WITNESS: Yeah. It's Witenstein, 17 yes. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Okay. And do you have any recollection 20 of receiving this e-mail? 21 A. No. 22 Q. Do you have any recollection following</p>

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<p style="text-align: right;">Page 788</p> <p>1 any of the steps outlined by Ms. Witenstein to</p> <p>2 you?</p> <p>3 A. No.</p> <p>4 Q. Ma'am, I have just two more documents.</p> <p>5 A. Okay.</p> <p>6 Q. First, ma'am, do you recall a -- being</p> <p>7 a member of or participating in a</p> <p>8 Medicare/Medicaid task force?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I don't -- I don't know.</p> <p>11 That's pretty broad. I -- you'd have to be more</p> <p>12 specific.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Do you recall any entity that you may</p> <p>15 have led or may have participated in called the</p> <p>16 Medicaid or Medicare task force?</p> <p>17 A. Oh, yeah, I did have -- when I was -- I</p> <p>18 think I -- in government affairs, we had a task</p> <p>19 force that updated divisions on different</p> <p>20 policies.</p> <p>21 Q. Well, what was -- is that the</p> <p>22 Medicare/Medicaid task force?</p>	<p style="text-align: right;">Page 790</p> <p>1 A. Mm-hmm.</p> <p>2 Q. -- "September 15th"?</p> <p>3 A. Yes.</p> <p>4 Q. And then it reflects that the meeting</p> <p>5 was canceled?</p> <p>6 A. Yes.</p> <p>7 Q. What was the Medicare/Medicaid task</p> <p>8 force?</p> <p>9 A. Well, that was a group that was loosely</p> <p>10 got together from the different divisions to just</p> <p>11 -- we just updated everybody on if there were</p> <p>12 updates involving Medicare and Medicaid.</p> <p>13 Q. Were you the head of that group?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 THE WITNESS: I -- well, it wasn't</p> <p>16 really there was a head. I convened the</p> <p>17 meetings.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Okay. And how many meetings did the</p> <p>20 Medicare/Medicaid task force have?</p> <p>21 A. I don't remember.</p> <p>22 Q. Do you remember what the time period</p>
<p style="text-align: right;">Page 789</p> <p>1 A. I don't remember the name of it. I</p> <p>2 think that's the name of it, but I don't</p> <p>3 remember.</p> <p>4 Q. See if this will refresh your</p> <p>5 recollection.</p> <p>6 (Exhibit Tobiason 033 marked.)</p> <p>7 MS. ST. PETER-GRIFFITH: Let the record</p> <p>8 reflect that the witness has been handed what's</p> <p>9 been marked as Tobiason Exhibit 33.</p> <p>10 THE WITNESS: Mm-hmm.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Ms. Tobiason, do you recognize this</p> <p>13 document?</p> <p>14 A. No, I don't remember it. But it looks</p> <p>15 like it's from me.</p> <p>16 Q. It's an e-mail --</p> <p>17 A. Mm-hmm.</p> <p>18 Q. -- from you to a whole series of</p> <p>19 individuals?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And the subject line reads,</p> <p>22 "Medicare-Medicaid Task Force Meeting" --</p>	<p style="text-align: right;">Page 791</p> <p>1 was that it existed?</p> <p>2 A. Maybe a year.</p> <p>3 Q. Do you recall any conversations that</p> <p>4 were conducted at the meetings of the Medicaid</p> <p>5 and Medicare task force?</p> <p>6 MS. TABACCHI: I'm going to caution the</p> <p>7 witness not to reveal the substance of any</p> <p>8 communications with lawyers who --</p> <p>9 THE WITNESS: Mm-hmm.</p> <p>10 MS. TABACCHI: -- may have participated</p> <p>11 in those meetings.</p> <p>12 THE WITNESS: Mm-hmm. I think some of</p> <p>13 it was -- each -- each division went around and</p> <p>14 just talked about perhaps if they have a -- a</p> <p>15 reimbursement issue, like, for example, if there</p> <p>16 was a coverage issue at Ross or if there was a</p> <p>17 state Medicaid program that was asking for</p> <p>18 additional rebates or whatever. There would just</p> <p>19 be an update on if there were anything specific</p> <p>20 that the divisions wanted to update others on.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Anything else?</p>

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<p style="text-align: right;">Page 792</p> <p>1 A. That was mainly an update. It was just 2 a way to update pretty much, I believe. 3 Q. Were there any discussions about the 4 need to evaluate whether the various divisions 5 complied with federal and state Medicare and 6 Medicaid fraud and abuse laws? 7 MS. TABACCHI: Again, I'm going to 8 caution the witness not to reveal the substance 9 of any attorney-client communications that may 10 have happened in the course of this meeting 11 involving a number of Abbott lawyers. 12 THE WITNESS: Mm-hmm. I don't remember 13 any specific conversations. 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Were there any lawyers attending these 16 meetings? 17 A. Yes. 18 Q. What was the purpose of the lawyers 19 being at the meetings? 20 MS. TABACCHI: Object to the form. 21 THE WITNESS: I -- I think it was they 22 wanted to be updated.</p>	<p style="text-align: right;">Page 794</p> <p>1 Q. Okay. Why? 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: Well, I -- I just think 4 that -- I don't know. They just petered out. It 5 just wasn't -- didn't seem necessary. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. Why didn't it seem necessary? 8 MS. TABACCHI: Object to the form. 9 THE WITNESS: I -- I don't know. It 10 was like it -- it was just that I -- I took a 11 different role in government affairs and didn't 12 continue them. 13 BY MS. ST. PETER-GRIFFITH: 14 Q. Did you initiate the meetings, the task 15 force? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: Yes -- well, there were - 18 - I -- I can't say that because we incorporated 19 some -- I -- I -- I -- I would say yes. Okay. 20 Yes. 21 BY MS. ST. PETER-GRIFFITH: 22 Q. Why?</p>
<p style="text-align: right;">Page 793</p> <p>1 BY MS. ST. PETER-GRIFFITH: 2 Q. Were they providing any legal advice at 3 these meetings? 4 MS. TABACCHI: Object to the form. 5 THE WITNESS: I don't -- I don't 6 remember. 7 BY MS. ST. PETER-GRIFFITH: 8 Q. Do you remember anything else about the 9 Medicare and Medicaid task force meetings? 10 A. We had refreshments. 11 Q. Okay. Other than -- 12 MS. TABACCHI: It's that time of the 13 day. 14 THE WITNESS: That was sort of a -- 15 yes. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Anything other than that you had 18 refreshments? 19 A. They weren't well-attended. Let me put 20 it that way. 21 Q. Okay. Were they disbanded? 22 A. Yes.</p>	<p style="text-align: right;">Page 795</p> <p>1 A. Well, because there may be things that 2 were going on with coding coverage. Many things 3 in reimbursement that -- and a lot of them didn't 4 even cross divisions, but it was just so that 5 they -- so people would be informed in case, you 6 know -- so they knew what was going on in the 7 environment. 8 Q. Were there any minutes maintained of 9 these particular meetings? 10 A. No. 11 Q. Were there any notes that were taken 12 concerning the meetings? 13 MS. TABACCHI: Object to the form. 14 THE WITNESS: I don't think -- there 15 was no official note taker. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Well, did you take notes? 18 A. Maybe. I don't remember. 19 Q. Where -- where would you maintain your 20 notes? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: Well, I would have kept</p>

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<p style="text-align: right;">Page 796</p> <p>1 them in my office.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Okay. Do you still have them?</p> <p>4 A. I doubt it, no.</p> <p>5 Q. Why not?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Well, they dealt with</p> <p>8 perhaps a device or reimbursement issues. I</p> <p>9 don't keep everything that I -- that I have on</p> <p>10 reimbursement. There didn't seem to be any need</p> <p>11 to keep these -- these notes.</p> <p>12 BY MS. ST. PETER-GRIFFITH:</p> <p>13 Q. You mean other than the litigation hold</p> <p>14 memos that you've received over the years?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: A lot of the discussion</p> <p>17 didn't revolve around AWP.</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Did it revolve around Medicare or</p> <p>20 Medicaid reimbursement?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: Not necessarily, no. A</p>	<p style="text-align: right;">Page 798</p> <p>1 A. No.</p> <p>2 Q. How does Abbott know what took place at</p> <p>3 these meetings?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: What do you mean, what</p> <p>6 does Abbott know?</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Meaning Abbott internally as a</p> <p>9 business, as a corporation. Was it important to</p> <p>10 Abbott to maintain a record of what occurred at</p> <p>11 these meetings?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Well, I didn't think so,</p> <p>14 but I was -- you know, I -- I didn't -- we just -</p> <p>15 - were just updating on -- there wasn't -- I</p> <p>16 didn't see any need.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. Did you destroy any records concerning</p> <p>19 the Medicare or Medicaid task force?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: I don't know. I don't --</p> <p>22 I don't remember. I don't know. I just don't</p>
<p style="text-align: right;">Page 797</p> <p>1 lot of it was private.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Well, this was the Medicare or Medicaid</p> <p>4 task force.</p> <p>5 A. It was just --</p> <p>6 MS. TABACCHI: Object to the form and</p> <p>7 the tone.</p> <p>8 THE WITNESS: -- updates. It was</p> <p>9 updates. And I don't -- I don't even remember</p> <p>10 taking notes, to be honest with you. I -- I</p> <p>11 honestly don't remember. And I didn't -- I never</p> <p>12 thought that it revolved around the AWP</p> <p>13 litigation.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Well, did it pertain to Medicare or</p> <p>16 Medicaid?</p> <p>17 A. Well, it could have, yes.</p> <p>18 Q. And do you have a specific recollection</p> <p>19 of taking any notes during these meetings?</p> <p>20 A. No, I do not.</p> <p>21 Q. Did you do anything to document these</p> <p>22 meetings or the substance of these meetings?</p>	<p style="text-align: right;">Page 799</p> <p>1 know.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. What have you done to ensure that</p> <p>4 you've complied with the litigation hold memos</p> <p>5 that you've received?</p> <p>6 A. I have gone through my files. I have</p> <p>7 gone through my e-mails. I have gone through my</p> <p>8 -- my files on my computer. I have turned over -</p> <p>9 - I -- there's -- there's other things besides</p> <p>10 just this litigation. I have tried to keep my</p> <p>11 files, send them to legal when I see something</p> <p>12 that -- that appears to be part of the hold.</p> <p>13 Q. Did anyone come and search your files</p> <p>14 to ascertain what was part -- whether or not you</p> <p>15 had documents that were part of the hold?</p> <p>16 A. Yes.</p> <p>17 Q. Who?</p> <p>18 A. Well, Gabe looked at my computer files.</p> <p>19 Q. Who is Gabe?</p> <p>20 A. Right here (indicating).</p> <p>21 Q. Oh, I'm sorry.</p> <p>22 When did Gabe look at your computer</p>

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<p style="text-align: right;">Page 800</p> <p>1 files?</p> <p>2 A. Oh, last year sometime.</p> <p>3 Q. Did you do anything else?</p> <p>4 A. Anything else? Well, I've gone through</p> <p>5 my files.</p> <p>6 Q. Did anyone go through your files to</p> <p>7 ascertain whether you had documents responsive to</p> <p>8 any subpoena served by the United States or the</p> <p>9 relator in this case?</p> <p>10 MS. TABACCHI: Object to the form.</p> <p>11 THE WITNESS: I don't know. I don't</p> <p>12 remember. I just know that -- that there's been</p> <p>13 a lot of people looking at my files.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Did you throw anything away in your</p> <p>16 files?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 THE WITNESS: Well, I -- I throw things</p> <p>19 away, yes, of course.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. What do you throw away?</p> <p>22 A. Well, things that seem to be outdated.</p>	<p style="text-align: right;">Page 802</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall ever telling Ms. Shonk,</p> <p>3 Ms. McDaniels, or Mr. Tootell or anyone else at</p> <p>4 Ross in and around 2003 that it was okay to</p> <p>5 communicate AWP Red Book information to Abbott</p> <p>6 customers?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: I don't really remember</p> <p>9 this. Mm-mmm.</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. You don't remember having such a</p> <p>12 conversation?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 THE WITNESS: No, I don't.</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Would you at any time have told Ross --</p> <p>17 anyone in the Ross products division or anyone</p> <p>18 else at Abbott that it was okay to either</p> <p>19 verbally or fax a copy of Red Book AWP</p> <p>20 information on Abbott products to customers?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I -- I thought our policy</p>
<p style="text-align: right;">Page 801</p> <p>1 I have a lot of things dealing with coverage,</p> <p>2 coding, devices, diagnostics, vascular, you name</p> <p>3 it. We have a lot of divisions. Diabetes</p> <p>4 products. I -- I discard things that involve</p> <p>5 Medicare and Medicaid be -- you know, that may be</p> <p>6 related to other things than -- I mean, if I kept</p> <p>7 everything, I'd run out of space.</p> <p>8 Q. Okay. But have you destroyed anything</p> <p>9 pertaining to Medicaid or Medicare reimbursement</p> <p>10 for either home infusion products or Abbott's HPD</p> <p>11 drugs or products?</p> <p>12 A. Not that I'm aware of.</p> <p>13 MS. ST. PETER-GRIFFITH: Last exhibit</p> <p>14 we'll mark today.</p> <p>15 (Exhibit Tobiason 034 marked.)</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Ma'am, do you recognize this document?</p> <p>18 A. No.</p> <p>19 Q. It appears to be an e-mail from Sarah</p> <p>20 McDaniel to Michael Tootell. Do you see that?</p> <p>21 A. It does.</p> <p>22 Q. With a cc to Julie Shonk?</p>	<p style="text-align: right;">Page 803</p> <p>1 was to tell them to call the drug databases.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Okay.</p> <p>4 A. So I don't -- I don't know. I might</p> <p>5 have; I don't know. I don't remember.</p> <p>6 Q. Well, if you had advised --</p> <p>7 A. Mm-hmm.</p> <p>8 Q. -- that it was okay to provide</p> <p>9 customers with AWP Red Book information in 2003,</p> <p>10 would that have violated Abbott's policy?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 THE WITNESS: I think Abbott's policy</p> <p>13 allowed centralized reimbursement functions to do</p> <p>14 more than -- than -- and we did allow certain</p> <p>15 entities to receive AWP information.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. What entities?</p> <p>18 A. Managed care.</p> <p>19 Q. Okay. What about customers?</p> <p>20 A. I -- you know, I don't remember.</p> <p>21 Q. Could you have provided such advice?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 804</p> <p>1 THE WITNESS: I could have; I just 2 don't remember. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Would that advice have violated Abbott 5 policy? 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: I -- I don't know if the 8 policy was in place then. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Okay. 11 A. I don't know which policies were in 12 place. 13 Q. Well, if it wasn't -- if Abbott didn't 14 have a formal policy in place, would it have been 15 wrong to do so? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I don't necessarily think 18 it would have been wrong. It just -- I don't 19 know what policy was in place. It could have 20 been a violation of our policy; it may not have 21 been wrong. 22 BY MS. ST. PETER-GRIFFITH:</p>	<p style="text-align: right;">Page 806</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: I don't necessarily think 3 it was wrong; I just don't know if they had a 4 policy in place. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Well, if it wasn't wrong, why did 7 Abbott develop a policy -- 8 MS. TABACCHI: Object to the form. 9 BY MS. ST. PETER-GRIFFITH: 10 Q. -- prohibiting it? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: Well, I believe that -- 13 that Abbott believed that it was more appropriate 14 for any information regarding reimbursement to 15 come from a centralized reimbursement department. 16 BY MS. ST. PETER-GRIFFITH: 17 Q. So is that the basis for the policy? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: That was just part of it. 20 BY MS. ST. PETER-GRIFFITH: 21 Q. What was -- what were the other parts 22 of the policy, the bases for the policy?</p>
<p style="text-align: right;">Page 805</p> <p>1 Q. Do you recall anything else about any 2 advice given to anyone within Abbott that you 3 might have given concerning the provision of AWP 4 Red Book information -- 5 MS. TABACCHI: Object to the form. 6 BY MS. ST. PETER-GRIFFITH: 7 Q. -- to customers? 8 MS. TABACCHI: Same objection. 9 THE WITNESS: Well, I believe our 10 reimbursement guidelines discuss not giving AWP 11 information. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. And in -- 14 A. And that was when the policy was put in 15 place. 16 Q. Okay. Prior to the policy being in 17 place, would it have been wrong to provide 18 customers with Red Book AWP information, or any 19 AWP information -- 20 MS. TABACCHI: Object -- 21 BY MS. ST. PETER-GRIFFITH: 22 Q. -- concerning Abbott products?</p>	<p style="text-align: right;">Page 807</p> <p>1 A. Well, there was a lot of things 2 happening in the environment then. There were -- 3 PhRMA was creating marketing guidelines. There 4 were the OIG guidelines for compliance. There 5 were a number of things happening that we felt 6 that we needed to clarify our policy. 7 Q. Prior to the implementation of this 8 policy -- 9 A. Mm-hmm. 10 Q. -- did you at any time during your 11 tenure as an Abbott employer -- employee see any 12 problem with providing customers with AWP 13 information? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: Well, that's my opinion. 16 I'm not -- I don't really have an opinion on 17 this. I don't think it was prohibited. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Ma'am, you're in the Office of Ethics 20 and Compliance, aren't you? 21 MS. TABACCHI: Object to the form. 22 THE WITNESS: At this time? I was in</p>

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1 ethics and compliance.  
 2 BY MS. ST. PETER-GRIFFITH:  
 3 Q. Okay. Do you think it's appropriate  
 4 for someone within the ethics and compliance  
 5 department to be telling Ross products division  
 6 that it's okay to provide customers with Red Book  
 7 information --  
 8 MS. TABACCHI: Object to the form.  
 9 BY MS. ST. PETER-GRIFFITH:  
 10 Q. -- on Abbott's AWP's?  
 11 MS. TABACCHI: Object to the form.  
 12 THE WITNESS: Well, this was -- this  
 13 was very specific to one individual and as a  
 14 reimbursement specialist as a centralized help  
 15 line. And I think that our overall policy was  
 16 that it was preferable for them to get this data  
 17 from the drug databases. I know that for a fact.  
 18 BY MS. ST. PETER-GRIFFITH:  
 19 Q. But when you were in -- strike that.  
 20 MS. ST. PETER-GRIFFITH: Ms. Tobiason,  
 21 at this time I'm going to pass you --  
 22 THE WITNESS: Mm-hmm.

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1 MS. ST. PETER-GRIFFITH: -- as a  
 2 witness to Mr. Breen, Relator's counsel. I thank  
 3 you for your time.  
 4 THE WITNESS: Thank you.  
 5 MS. TABACCHI: Do you want to take a  
 6 five-minute break while we're switching the mike  
 7 and everything?  
 8 MR. BREEN: Sure.  
 9 MS. ST. PETER-GRIFFITH: Sure.  
 10 THE VIDEOGRAPHER: We are off the  
 11 record at 3:41 p.m.  
 12 (Recess taken.)  
 13 THE VIDEOGRAPHER: We are back on the  
 14 record at 3:53 p.m.  
 15  
 16 EXAMINATION  
 17 BY MR. BREEN:  
 18 Q. Good afternoon, Ms. Tobiason.  
 19 A. Hi.  
 20 Q. We met before. My name is Jim Breen.  
 21 I represent Ven-A-Care, one of the plaintiffs in  
 22 these cases.

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1 I just want to make sure before I go  
 2 into more specific questions that I understand  
 3 your testimony over the last -- I guess this is  
 4 the third day of testimony -- when it comes to  
 5 the following issue. I want to make sure I  
 6 understand when you first gained any knowledge  
 7 whatsoever that there was an issue relating to  
 8 government concern about Abbott AWP's for HPD  
 9 products.  
 10 A. Do you have a question?  
 11 Q. Right. So my question is, when did you  
 12 first get -- become knowledgeable at all that the  
 13 government had any concern about Abbott's H --  
 14 AWP's for HPD products?  
 15 MS. TABACCHI: Object to the form.  
 16 THE WITNESS: I -- I don't know. I  
 17 think there was -- I knew there was concern about  
 18 AWP in the 1990s, not necessarily relating to  
 19 Abbott's products. I do remember reading in the  
 20 New York Times about some of our drugs were  
 21 listed as concerns. Now, that's what I remember.  
 22 BY MR. BREEN:

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1 Q. So your recollection that you knew --  
 2 learned something about concerns about AWP's in  
 3 the 1990s, did you gain that from the New York  
 4 Times?  
 5 A. No. In some of the regulations, CMS,  
 6 you know, that there were -- they put out  
 7 regulations -- not regulations or notices or  
 8 whatever about that they wanted to look at  
 9 differences in -- from AWP, and they felt there  
 10 was -- they were going to look at an alternative  
 11 methodology. I don't know if that means a  
 12 concern. I know they were saying that they felt  
 13 that they wanted to get different methodology.  
 14 Q. What is the earliest time that you had  
 15 any knowledge that the United States government  
 16 was concerned about the way Abbott's AWP's were  
 17 being reported?  
 18 A. I honestly don't remember. I -- I  
 19 don't have any idea.  
 20 Q. So you don't even know if you were  
 21 aware of this at some time in the '90s?  
 22 MS. TABACCHI: Object to the form.

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<p style="text-align: right;">Page 812</p> <p>1 THE WITNESS: My first recollection was  2 in the -- in the 2000s that the government may be  3 looking at it, that there was lawsuits. But do I  4 know? I don't remember. I know they -- they  5 were looking at alternative methodologies. I  6 don't -- it's very hard to distinguish it in my -  7 - in -- in my mind.  8 BY MR. BREEN:  9 Q. Well, during the time that you've  10 worked at Abbott, has it been your experience  11 that when Abbott as a corporation has concerns  12 that one of its divisions or one of its personnel  13 may be doing something that can get Abbott in  14 trouble that Abbott takes corrective action to  15 look into the matter and take whatever action  16 might be appropriate?  17 A. Abbott Laboratories expects everybody  18 to follow the code of conduct.  19 Q. So they just expect people to follow  20 the code of conduct. And if something comes up  21 where Abbott's concerned, they just don't bother  22 looking into it. Is that what you're saying?</p>	<p style="text-align: right;">Page 814</p> <p>1 way. I'm only asking this based upon your  2 knowledge. Do you have any knowledge sitting  3 here today that Abbott has ever taken corrective  4 action when it comes to communications about AWP  5 with its customers?  6 MS. TABACCHI: Object to the form.  7 THE WITNESS: Based on my very limited  8 knowledge, I -- I don't -- I don't know of any.  9 But I don't deal with investigations, corrective  10 action, or any of that.  11 BY MR. BREEN:  12 Q. And you didn't have any role whatsoever  13 in the implementation of Abbott's policy  14 regarding communication of AWP information with  15 its customers?  16 MS. TABACCHI: Object to the form.  17 THE WITNESS: We -- I was involved in  18 helping to create the policy, and the divisions  19 then were responsible for implementing it.  20 BY MR. BREEN:  21 Q. Okay. What policy are you talking  22 about when you say you were involved in helping</p>
<p style="text-align: right;">Page 813</p> <p>1 MS. TABACCHI: Object to the form.  2 THE WITNESS: I don't have specific  3 instances, but I know that Abbott has taken  4 corrective action.  5 BY MR. BREEN:  6 Q. Okay. But to your knowledge, Abbott  7 never took any corrective action regarding AWP  8 until the 2003 policy that you discussed with Ms.  9 St. Peter-Griffith during the early -- earlier  10 today. Is that correct?  11 MS. TABACCHI: Object to the form.  12 THE WITNESS: When you say corrective  13 action, what do you mean?  14 BY MR. BREEN:  15 Q. Corrective action regarding Abbott's  16 use of AWP in discussions with customers. Let's  17 start there.  18 A. I don't -- I don't know. They may have  19 had policies in the past. All I know is that  20 when we created an ethics and compliance policy,  21 we put that in there.  22 Q. Okay. Let me ask the question this</p>	<p style="text-align: right;">Page 815</p> <p>1 to create the policy and implement the policy?  2 A. I'm talking about the Office of Ethics  3 and Compliance policy on reimbursement  4 information and support.  5 Q. And is that -- does that include  6 discussions with customers or prospective  7 customers about topics such as Abbott's AWP's?  8 MS. TABACCHI: Object to the form.  9 THE WITNESS: The policy prohibits  10 Abbott employees, except in certain limited  11 instances, from providing AWP's and many other  12 things they're prohibited from providing to  13 customers.  14 BY MR. BREEN:  15 Q. Such as what?  16 A. Like they can't provide ICD-9 codes,  17 diagnosis codes. They can't provide -- they  18 can't provide copay information.  19 Q. How long has it been Abbott's policy  20 that customers should not be provided with ICD-9  21 codes by Abbott?  22 A. We wrote -- we -- we put it in an OEC</p>

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<p style="text-align: right;">Page 816</p> <p>1 format in 2003. Whether there were other 2 policies, I -- I just don't know. 3 Q. So the whole time you were in charge of 4 reimbursement, as far as you know, until 2003, 5 there was never a policy prohibiting or 6 precluding Abbott employees from communicating 7 about ICD-9 codes with customers. Is that your 8 testimony? 9 MS. TABACCHI: Object to the form. 10 THE WITNESS: I was involved in home 11 infusion services. And so we didn't really deal 12 with specific ICD-9 codes for products. 13 When I was in diagnostics, we provided 14 publicly available information, which is on the 15 carrier Medicare websites about ICD-9 codes for 16 diagnostic tests. So it just depends on -- it 17 depended on the circumstance. 18 BY MR. BREEN: 19 Q. Did Abbott, to your knowledge, prepare 20 a script for its help line regarding the issue of 21 the communications about AWP's with customers -- 22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 818</p> <p>1 A. In some -- 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: -- instances. It depends 4 on the division's procedures. 5 BY MR. BREEN: 6 Q. Well, what about this policy that was 7 in the 2003 policy prohibiting Abbott employees 8 from discussing AWP information with customers? 9 Is that policy implemented in any help line 10 script, to your knowledge? 11 MS. TABACCHI: Object to the form. 12 THE WITNESS: Yes, it could be. I just 13 don't remember specifically. 14 BY MR. BREEN: 15 Q. Do you -- 16 A. And I think it depends on which 17 division you're talking about. 18 Q. Well, let's talk about Ross first. 19 A. Mm-hmm. 20 Q. Does Ross have a help line with a 21 script that deals in any way with communication 22 about AWP information with customers --</p>
<p style="text-align: right;">Page 817</p> <p>1 BY MR. BREEN: 2 Q. -- at any time in 2003? 3 A. Which help line? 4 Q. Any help line. 5 A. I don't remember which help lines were 6 in effect then. 7 Q. So you don't recall -- do you ever 8 recall you yourself being involved with preparing 9 a help line script as it related to communication 10 about reimbursement information with customers? 11 A. Yes. We have a requirement that 12 scripts need to be approved. 13 Q. And who approves the scripts? 14 A. Well, it goes through the -- the ethics 15 and compliance, and then I also am involved in 16 approving it to make sure it conforms with our 17 OEC policy on reimbursement information and 18 support. 19 Q. As a matter of fact, you've got final 20 approval authority, don't you? 21 A. I may, yes. 22 Q. You're a final approver, aren't you?</p>	<p style="text-align: right;">Page 819</p> <p>1 A. They have this -- 2 MS. TABACCHI: Object to the form. 3 THE WITNESS: Oh, sorry. 4 They have a script. I don't remember. 5 I -- I just don't remember what it says about the 6 AWP. I don't remember. 7 BY MR. BREEN: 8 Q. Yet you were the final approver on that 9 script, weren't you? 10 A. Like -- yes, I -- I believe, yes. 11 Q. And you have no recollection whatsoever 12 if it even mentions AWP. 13 MS. TABACCHI: Object to the form. 14 BY MR. BREEN: 15 Q. Is that your testimony? 16 A. Well, it also goes through not just me. 17 It goes through the legal department too. And I 18 -- I just don't remember. I review a lot of 19 scripts. They may have something in there, and - 20 - but they may not. I just don't remember. 21 Q. So it's your testimony that as far as 22 you recall, the Ross help line script as it</p>

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<p style="text-align: right;">Page 820</p> <p>1 relates to reimbursement questions has nothing in 2 it about communicating -- communications 3 regarding AWP with customers as far -- excuse me 4 -- as far as you know today. 5 A. That's not -- 6 MS. TABACCHI: Object to the form. 7 THE WITNESS: That's not what I said. 8 I said it -- it could and it most likely does. I 9 just don't remember it. 10 BY MR. BREEN: 11 Q. Well, if you don't remember it, what 12 makes you think it's in the script if you were 13 the final approver? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: Because it's in our 16 policy, and I know they -- they try to 17 incorporate a number of things in the policy in 18 the scripts. But I don't remember the specific 19 script on that. You'd have to -- I'd have to see 20 it. I don't remember it. But I -- I think it's 21 unfair to characterize it that I -- that it 22 wouldn't be in there.</p>	<p style="text-align: right;">Page 822</p> <p>1 Q. Is that part of Hospital Products 2 division? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: No. 5 BY MR. BREEN: 6 Q. All right. Did Hospital Products 7 division ever have a help line script relating to 8 reimbursement, to your knowledge? 9 A. Well, hospital products was spun off to 10 Hospira, so I can't -- I -- I don't -- I don't 11 remember when the spinoff was. 12 Q. What does that have to do with whether 13 you recall if Hospital Products division ever had 14 a help line script or a help line? 15 MS. TABACCHI: Object -- 16 BY MR. BREEN: 17 Q. You either recall they had a help line 18 or you don't. 19 MS. TABACCHI: Object to the form. 20 BY MR. BREEN: 21 Q. Do you recall if Hospital Products 22 division ever had a help line relating to</p>
<p style="text-align: right;">Page 821</p> <p>1 BY MR. BREEN: 2 Q. I'm not characterizing that way; I'm 3 asking if you recall that it's in there. That's 4 my question. Do you recall that it's in the 5 script? Yes or no. 6 MS. TABACCHI: Object to the form. 7 BY MR. BREEN: 8 Q. That's my question. 9 A. I don't -- 10 Q. You either recall or you don't. 11 A. I don't recall, and I -- that's -- 12 that's what -- I don't recall. 13 Q. Then that's all I want to know, if you 14 recall. 15 Now, how about Hospital Products 16 division? Does Hospital Products division have a 17 help line that relates to reimbursement matters? 18 MS. TABACCHI: Object to the form. 19 THE WITNESS: I have no idea. 20 BY MR. BREEN: 21 Q. How about renal care? 22 A. Yes, renal care does.</p>	<p style="text-align: right;">Page 823</p> <p>1 reimbursement? 2 MS. TABACCHI: Object to the form. 3 MR. BREEN: Wait one second. What's 4 wrong with that question, Counsel? 5 MS. TABACCHI: Jim, this is the third 6 day of her testimony. It's the end of the day. 7 You do not need to take that tone with her. 8 MR. BREEN: So it's the tone. 9 MS. TABACCHI: The tone. 10 MR. BREEN: Then I'll change the tone. 11 MS. TABACCHI: The tone and you've 12 asked the question four times. She's already 13 tried to answer it. 14 MR. BREEN: I'm not asking it -- 15 BY MR. BREEN: 16 Q. Well, my question is, do you recall if 17 Hospital Products division ever had a help line 18 script relating to reimbursement? 19 A. Well, prior to the spinoff, I don't 20 recall them ever having a help line. 21 Q. Okay. Do you recall them having a help 22 line after the spinoff?</p>

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<p style="text-align: right;">Page 824</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 BY MR. BREEN:</p> <p>3 Q. Or would you even know that?</p> <p>4 A. I wouldn't know that. I wasn't with</p> <p>5 Hospira.</p> <p>6 Q. Okay. How about TAP? Did it ever have</p> <p>7 a help line relating to reimbursement, to your</p> <p>8 knowledge?</p> <p>9 A. I don't know.</p> <p>10 Q. Now, do you have any idea whatsoever</p> <p>11 why Abbott developed a policy in 2003 precluding</p> <p>12 its employees from discussing -- or at least its</p> <p>13 salespeople from discussing AWP information with</p> <p>14 customers?</p> <p>15 MS. TABACCHI: Objection. Asked and</p> <p>16 answered.</p> <p>17 THE WITNESS: Well, we create the</p> <p>18 policy, and we included a number of things, not</p> <p>19 just AWP, but there's a number of things that</p> <p>20 they -- that they're -- we don't want them to</p> <p>21 discuss because we -- we don't expect them to be</p> <p>22 reimbursement experts and to have to keep up to</p>	<p style="text-align: right;">Page 826</p> <p>1 A. Mm-hmm.</p> <p>2 Q. And the Bates number on the bottom is</p> <p>3 ABT212051.</p> <p>4 A. Right. It says 757.</p> <p>5 Q. All right. Now -- and I'll represent</p> <p>6 to you that this was provided to us by Abbott's</p> <p>7 counsel, and it was represented to us that it was</p> <p>8 provided from Abbott's files.</p> <p>9 And do you have -- I just want to know,</p> <p>10 sitting here today, do you have any reason to</p> <p>11 doubt that this document came from Abbott's</p> <p>12 business records?</p> <p>13 A. I have no reason to doubt that.</p> <p>14 Q. The entire time that you were at</p> <p>15 Abbott, did you ever experience a situation where</p> <p>16 your name was placed on a memo or -- or a</p> <p>17 correspondence such as what we're looking at here</p> <p>18 as being the person who sent it -- in this case</p> <p>19 it says, "From: Virginia Tobiason" -- do you see</p> <p>20 that? -- "Manager, Reimbursement."</p> <p>21 A. I do.</p> <p>22 Q. Have you ever had any -- a situation</p>
<p style="text-align: right;">Page 825</p> <p>1 date with all this information.</p> <p>2 BY MR. BREEN:</p> <p>3 Q. Now, I'm going to ask that you look at</p> <p>4 Exhibit 767, which was one of the early ones that</p> <p>5 Ms. --</p> <p>6 MS. ST. PETER-GRIFFITH: They should be</p> <p>7 right on top.</p> <p>8 BY MR. BREEN:</p> <p>9 Q. -- St. Peter-Griffith showed you this</p> <p>10 morning.</p> <p>11 A. 767?</p> <p>12 Q. Right.</p> <p>13 MS. ST. PETER-GRIFFITH: Ma'am, they</p> <p>14 should be right on top.</p> <p>15 THE WITNESS: It's 757.</p> <p>16 BY MR. BREEN:</p> <p>17 Q. I believe it's '67, but I may have</p> <p>18 misspoke.</p> <p>19 A. It says '57 on mine.</p> <p>20 Q. It's the -- it's dated June 11th, 1991.</p> <p>21 A. Mm-hmm. It says 757.</p> <p>22 Q. It's a memo from you.</p>	<p style="text-align: right;">Page 827</p> <p>1 arise where it came to your attention that</p> <p>2 somehow a memo or correspondence got sent out as</p> <p>3 being from you when, in fact, you did not send</p> <p>4 it?</p> <p>5 A. No.</p> <p>6 Q. Okay. Now, you'll see here you're</p> <p>7 manager, reimbursement. What division were you</p> <p>8 manager of reimbursement of?</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 BY MR. BREEN:</p> <p>11 Q. In '91.</p> <p>12 A. Well, I was in home infusion services.</p> <p>13 Q. Home infusion services. Okay. And so</p> <p>14 you were sending this purely on behalf of home</p> <p>15 infusion services. Is that correct?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 THE WITNESS: Yes, I believe so.</p> <p>18 BY MR. BREEN:</p> <p>19 Q. Now, if you'll go down to the very</p> <p>20 bottom.</p> <p>21 A. Mm-hmm.</p> <p>22 Q. You state -- and there's a bullet point</p>

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<p style="text-align: right;">Page 828</p> <p>1 at the bottom -- "Discounts vary among 2 purchasers. Some providers may pay full A.W.P. 3 and others may get a discount but not a full 15% 4 due to manufacturers discounting practices." 5 A. Mm-hmm. 6 Q. Do you see that? 7 A. Mm-hmm. 8 Q. Was it your understanding in June of 9 1991 that some providers may pay full AWP for 10 drugs? 11 MS. TABACCHI: Objection. Asked and 12 answered. I'll just let you know that it's 4:10, 13 and we're not going past 5:00 today. If you want 14 to ask her questions that you've already asked 15 her once before, that's your use of your time. I 16 object to you doing so. 17 MR. BREEN: I didn't ask her this 18 question before, Counsel. 19 BY MR. BREEN: 20 Q. Was that your understanding back in 21 1991? 22 A. Yes, I believe my understanding whether</p>	<p style="text-align: right;">Page 830</p> <p>1 768. 2 MS. ST. PETER-GRIFFITH: No. If you 3 flip through, 1, 2, 3, 4, 5 -- just keep flipping 4 through, ma'am -- they're in sequential order. 5 THE WITNESS: Yes. 6 BY MR. BREEN: 7 Q. Now, this should be a three-page 8 document. The first page is from Richard Rieger 9 and is Bates numbered ABT 53263 and is forwarding 10 a two-page memo that's titled Medicare Part B 11 Payments for Drugs Average Wholesale Price Issue. 12 Do you see that? 13 MS. TABACCHI: I do just want to state 14 for the record that I believe Ms. St. Griffith 15 has clarified earlier that this is not the 16 complete document, just using a few pages of it. 17 BY MR. BREEN: 18 Q. Okay. All right. Well, I'm 19 specifically going to direct your attention to 20 ABT 53263, '264, and '265. 21 MS. ST. PETER-GRIFFITH: Actually, I 22 don't think I made that representation. I think,</p>
<p style="text-align: right;">Page 829</p> <p>1 there could be -- that there were a variety of -- 2 of different arrangements. 3 Q. My question is, was it your 4 understanding back in 1991 -- in June, at least - 5 - that some providers paid AWP for drugs? 6 A. I said may. Yes, I -- I think I 7 thought there -- there may be some that do pay 8 AWP. 9 Q. Okay. And you had been manager of 10 reimbursement for how long at that point? 11 A. Oh, since about 1984 or '5. 12 Q. So you'd been manager of reimbursement 13 then for about six years at least, correct? 14 A. Yes. 15 Q. And I'll now ask you to go to Exhibit 16 12. It should be in order there, which is the 17 exhibits that you were asked about today. 18 A. 12? 19 MS. ST. PETER-GRIFFITH: 12. It should 20 be -- it's at the top. They're in sequential 21 order. 22 THE WITNESS: Well, this says Exhibit</p>	<p style="text-align: right;">Page 831</p> <p>1 according to Mr. Tootell's testimony, this is a 2 complete document. 3 MS. TABACCHI: Okay. 4 MR. BREEN: And I'm going to go by 5 Abbott's production of this. 6 MS. TABACCHI: Sure. 7 MR. BREEN: Abbott produced it and 8 Bates-labeled it. I trust that Abbott would 9 provide it to us in the order that it came out of 10 their business records. Now -- 11 MS. TABACCHI: And I'm not disputing 12 that. I just -- I think there are more pages to 13 the back of this. So if you want to use the 14 first three, that's fine. 15 MR. BREEN: I'm just going to use the 16 first three right now. 17 BY MR. BREEN: 18 Q. If you'll look, you'll see that this 19 purports to be an interoffice correspondence on 20 Abbott stationery dated December 20th, 1996. Do 21 you see that? 22 A. Yes.</p>

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<p style="text-align: right;">Page 832</p> <p>1 Q. Okay. And you can see that you're on 2 the circulation list there, Ginny Tobiason. Do 3 you see that? 4 A. I do. 5 Q. All right. And specifically I'm going 6 to ask if you at least recall being a participant 7 in the Medicare working group during 1996. 8 A. I really don't recall. 9 Q. So you don't -- sitting here today, you 10 can't recall whether you participated in the 11 Medicare working group or not, right? 12 A. It -- yes. 13 Q. So since you have no recollection, 14 would the fact that your name is on this from Mr. 15 Rieger and it relates to the Medicare working 16 group, would that indicate to you that you 17 probably had some involvement in the Medicare 18 working group in December of 1996? 19 MS. TABACCHI: Object to the form. 20 Asked and answered. 21 THE WITNESS: Yes. 22 BY MR. BREEN:</p>	<p style="text-align: right;">Page 834</p> <p>1 Were you the manager of reimbursement in December 2 of 1996? 3 A. I was the manager of reimbursement 4 services. 5 Q. Reimbursement services? Okay. 6 A. Mm-hmm. 7 Q. And so that's that position you've held 8 since about 1984, right? 9 A. Yes. 10 Q. Okay. So when Abbott personnel sent 11 you memos relating to reimbursement issues as the 12 manager of reimbursement services on December 13 20th of 1996, was it part of your job to consider 14 the information that Abbott personnel such as Mr. 15 Rieger sent to you? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: My job was to provide 18 reimbursement services and to oversee the billing 19 operation. Whether I got a memo or not doesn't 20 necessarily mean that I -- that was my job 21 responsibility. 22 BY MR. BREEN:</p>
<p style="text-align: right;">Page 833</p> <p>1 Q. Okay. So do you know of any reason why 2 the court should not assume that you were a 3 participant in the Medicare working group in 4 December of 1996? 5 MS. TABACCHI: Object to the form. 6 THE WITNESS: Yes, though I don't 7 remember it. 8 BY MR. BREEN: 9 Q. Just the only -- just sitting here 10 today, you don't remember it. 11 A. Mm-mmm. 12 Q. And so you believe that is a reason why 13 the court should question whether you 14 participated in the Medicare working group in 15 December of 1996? 16 MS. TABACCHI: Object to the form. 17 THE WITNESS: I really don't remember 18 if I went to meetings or I read any of the memos. 19 I just don't remember. 20 BY MR. BREEN: 21 Q. Just don't remember. Okay. 22 Well, let me ask you this question.</p>	<p style="text-align: right;">Page 835</p> <p>1 Q. Okay. So I just want to know, is it 2 your testimony that if you would have gotten a 3 memo from Mr. Rieger in December of 1996 such as 4 what has now been marked as Exhibit 12, I just 5 want to know whether or not it would have been 6 your job to read it. 7 A. Not necessarily, no. 8 Q. Okay. So how would you decide what 9 memos were part of your job to read and what 10 memos were not part of your job to read? 11 A. If it related to operations and 12 reimbursement services, I would generally read 13 them. If it involved other issues, I may not 14 have had time; I may not have read it; I may have 15 put it aside. I -- I just -- it was up to me to 16 just -- I mean, I just didn't read everything. 17 Q. What if it involved the potential 18 legality of the claims that were being processed 19 by your reimbursement services customers with 20 reimbursement services assistance? If it related 21 to that, would it be your job to read it? 22 MR. BREEN: Object to the form.</p>

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<p style="text-align: right;">Page 836</p> <p>1 THE WITNESS: The legality. Well, I --</p> <p>2 I'm sure if legal sent me something, I would have</p> <p>3 read it if it involved claims processing, yes.</p> <p>4 BY MR. BREEN:</p> <p>5 Q. Okay. Now, let's go to the second page</p> <p>6 of this exhibit, which is the memo.</p> <p>7 A. Mm-hmm.</p> <p>8 Q. And I'll direct your attention to the</p> <p>9 second paragraph. And I'll specifically --</p> <p>10 beginning on the -- I'll direct your attention to</p> <p>11 the second and third and fourth sentences, which</p> <p>12 read -- well, let's just start with the first</p> <p>13 sentence.</p> <p>14 "There have been several studies and</p> <p>15 investigations into the appropriateness of using</p> <p>16 AWP as the determining factor for payment. The</p> <p>17 common conclusion of these efforts is that the</p> <p>18 use of AWP as a payment measure results in</p> <p>19 excessive reimbursement that is far out-of-line</p> <p>20 with the estimated acquisition costs of the</p> <p>21 drugs" --</p> <p>22 A. Mm-hmm.</p>	<p style="text-align: right;">Page 838</p> <p>1 reading this.</p> <p>2 BY MR. BREEN:</p> <p>3 Q. Okay. Let's go to Exhibit 23. This is</p> <p>4 a multipart document beginning with ABT-DOJ</p> <p>5 296443, and then on the next -- the next page --</p> <p>6 A. Mm-hmm.</p> <p>7 Q. -- begins with another Bates sequence,</p> <p>8 TXABT 675301, '302, '303. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And then after that, the Bates sequence</p> <p>11 changes again.</p> <p>12 I specifically want to direct your</p> <p>13 attention to the second, third, and fourth pages</p> <p>14 of this composite exhibit. If you recall that</p> <p>15 this was a group of documents that Ms. St. Peter-</p> <p>16 Griffith showed you --</p> <p>17 A. Mm-hmm.</p> <p>18 Q. -- as coming from Rosemary Haas. Do</p> <p>19 you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And I want to start with the --</p> <p>22 I want to look at the second, third, and fourth</p>
<p style="text-align: right;">Page 837</p> <p>1 Q. -- "and AWP has little meaning to the</p> <p>2 drug manufacturer or the pharmacy to which it</p> <p>3 sells the drugs. In other words, there is some</p> <p>4 evidence that often the AWP for a drug is set at</p> <p>5 a particular level to establish third-party</p> <p>6 reimbursement, but has no relevance to any party</p> <p>7 beyond the third-party payor. For these reasons,</p> <p>8 the AWP issue is being presented and considered</p> <p>9 not as a program policy issue, rather as an issue</p> <p>10 steeped in fraud, abuse, and waste."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Now, if you would have gotten a memo</p> <p>14 like this in December of 1996 informing you about</p> <p>15 concerns that the AWP's may be steeped in fraud,</p> <p>16 abuse, and waste, would that have got your</p> <p>17 attention?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 THE WITNESS: Well, this was a -- a</p> <p>20 memo from an individual. I -- I don't know. I</p> <p>21 would have tempered it with if I knew something</p> <p>22 else. But I don't -- I don't even remember</p>	<p style="text-align: right;">Page 839</p> <p>1 pages of this exhibit. And specifically, it's an</p> <p>2 e-mail from Rosemary Haas dated 11/15/2001 at</p> <p>3 11:22 a.m. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And on the other side, in the To</p> <p>6 section, about halfway through it, you'll see</p> <p>7 your name there, Virginia Tobiason.</p> <p>8 A. Yes.</p> <p>9 Q. And you see the subject, House Plan for</p> <p>10 Reform of AWP. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And it says, "Attached is a</p> <p>13 letter sent yesterday to CMS Administrator Tom</p> <p>14 Scully announcing the House Energy and Commerce</p> <p>15 Committee's plan to reform" -- "for reform of</p> <p>16 AWP."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, my first question is, in</p> <p>20 November of 2001, were you still involved with</p> <p>21 the Medicare working group?</p> <p>22 MS. TABACCHI: Object to the form.</p>

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<p style="text-align: right;">Page 840</p> <p>1 THE WITNESS: Oh, I have no idea.</p> <p>2 BY MR. BREEN:</p> <p>3 Q. Well, what position did you have in</p> <p>4 November of 2001 that would have resulted in Ms.</p> <p>5 Haas sending you a communication such as we're</p> <p>6 looking at right now?</p> <p>7 A. I may have just moved over from doing</p> <p>8 the manager of reimbursement for diagnostics</p> <p>9 products to government affairs.</p> <p>10 Q. Okay. So was it your --</p> <p>11 A. I don't remember the date, though. I</p> <p>12 really don't.</p> <p>13 Q. Well, if Ms. Haas would have sent --</p> <p>14 sent you this e-mail --</p> <p>15 A. Mm-hmm.</p> <p>16 Q. -- on November 15th, 2001, would it</p> <p>17 have been your job to read it?</p> <p>18 A. Well, it dealt with House plan for</p> <p>19 reform of AWP, which is federal government. Not</p> <p>20 necessarily, no. I don't deal with the House</p> <p>21 activities, Congress.</p> <p>22 Q. You don't deal with the House -- the</p>	<p style="text-align: right;">Page 842</p> <p>1 Q. -- on the letter?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, I'm advised that we're</p> <p>4 running out of tape, so why don't we take a</p> <p>5 moment to change the tape. And if you want to</p> <p>6 take some time and look at this, we can do so.</p> <p>7 THE VIDEOGRAPHER: We are off the</p> <p>8 record at 4:25 p.m. with the end of Tape No. 4.</p> <p>9 (Brief interruption.)</p> <p>10 THE VIDEOGRAPHER: We are back on the</p> <p>11 record at 4:28 p.m. with the start of Tape No. 5.</p> <p>12 BY MR. BREEN:</p> <p>13 Q. Okay. Now, going back to November 14,</p> <p>14 2001, the date of the letter to Mr. Scully from</p> <p>15 chairman of the House commerce and energy</p> <p>16 committee Billy Tauzin.</p> <p>17 A. Mm-hmm.</p> <p>18 Q. Now, you see based upon the e-mail to</p> <p>19 you from Ms. Haas on the 15th that she sent you</p> <p>20 this letter to Mr. Scully within 24 hours of the</p> <p>21 letter being sent on November 14th, 2001. Do you</p> <p>22 see that?</p>
<p style="text-align: right;">Page 841</p> <p>1 Congress activities?</p> <p>2 A. The congressional act -- no, I'm not</p> <p>3 directly involved with those.</p> <p>4 Q. So if we go back to the Medicare</p> <p>5 working group documents, we'll see that you were</p> <p>6 never involved with anything that was going on in</p> <p>7 Congress?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: I -- if it -- if it --</p> <p>10 sometimes there were issues that came up, freezes</p> <p>11 on DME, things like that that may have -- that</p> <p>12 may have involved me. I -- I don't know. That's</p> <p>13 a very broad question.</p> <p>14 BY MR. BREEN:</p> <p>15 Q. Okay. Well, let's be more specific.</p> <p>16 Let's look at the -- the actual letter --</p> <p>17 A. Mm-hmm.</p> <p>18 Q. -- which you can see was purportedly</p> <p>19 sent on November 14th, 2001, just a day before</p> <p>20 the e-mail was sent to you. Do you see that? Do</p> <p>21 you see the November 14th, 2001, date --</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 843</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And Mr. Scully was the head of</p> <p>3 the whole Medicare and Medicaid programs,</p> <p>4 correct?</p> <p>5 A. He was the administer -- administrator</p> <p>6 for the center's first Medicare and Medicaid</p> <p>7 services, yes.</p> <p>8 Q. The guy in charge of Medicare and</p> <p>9 Medicaid, correct?</p> <p>10 A. Well, yeah. He reported to the HHS</p> <p>11 administrator, yeah.</p> <p>12 Q. And this letter is going to him by the</p> <p>13 chairman of the House commerce/energy committee,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And if you'll look with me in the</p> <p>17 second paragraph, start with the second sentences</p> <p>18 -- sentence: "These prices, known as Average</p> <p>19 Wholesale Prices (AWPs), do not necessarily</p> <p>20 represent what manufacturers actually charge</p> <p>21 health providers for the covered drugs. Some</p> <p>22 drug manufacturers use the AWPs to inflate</p>

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<p style="text-align: right;">Page 844</p> <p>1 dramatically the payments made for drugs by  2 Medicare and Medicare beneficiaries. Government  3 investigations have revealed that, as a result of  4 abuse in the current system, beneficiaries are  5 paying hundreds of millions of dollars in  6 inflated co-payments every year. Medicare also  7 pays upwards of one billion dollars in excess  8 payments every year."  9 Do you see that?  10 A. I do, yes.  11 Q. And do you see that he's talking about  12 manufacturers inflating AWP's?  13 A. Where it says "dramatically the  14 payments made for drugs," yes.  15 Q. Okay. Now, do you recall reading this  16 memo in this e-mail with the attached letter back  17 in 2001?  18 A. No.  19 Q. Well, if you had read it, do you think  20 you'd remember something like that?  21 MS. TABACCHI: Object to the form.  22 THE WITNESS: I don't remember. I -- I</p>	<p style="text-align: right;">Page 846</p> <p>1 saying that, so I don't know how I'd react.  2 BY MR. BREEN:  3 Q. Now, let's go to Exhibit 24.  4 A. Yes.  5 Q. And this is -- who -- that's your name,  6 the first name on the front of this document,  7 correct?  8 A. Yes, it is.  9 Q. But yet it's your testimony that you  10 have no recollection of this document whatsoever?  11 A. I never --  12 MS. TABACCHI: Object to the form.  13 THE WITNESS: I -- I -- I may recollect  14 that I -- I definitely didn't -- didn't do this.  15 BY MR. BREEN:  16 Q. Is it possible that one or more people  17 at Abbott were using your name on documents  18 without you knowing about it?  19 MS. TABACCHI: Object to the form.  20 BY MR. BREEN:  21 Q. On documents that related to  22 reimbursement and fraud and abuse issues in</p>
<p style="text-align: right;">Page 845</p> <p>1 can't answer that.  2 BY MR. BREEN:  3 Q. Did anybody at Abbott ever inform you  4 prior to November 14th, 2001, in your capacity as  5 manager of reimbursement services or any other  6 capacity that the United States Department of  7 Justice had accused Abbott of this exact kind of  8 AWP inflation conduct?  9 A. I don't remember anything, no.  10 Q. Well, if somebody would have told you  11 as -- as a person in charge of reimbursement  12 services for customers of Abbott that the AWP's  13 that were being used in the reimbursement area  14 for Abbott products were AWP's that the justice  15 department had told Abbott's counsel were being  16 inflated and were causing excess Medicare or  17 Medicaid reimbursement, if anybody would have  18 told you that, would that be something you'd  19 remember?  20 MS. TABACCHI: Object to the form.  21 THE WITNESS: Well, that calls for  22 speculation. I don't remember anybody ever</p>	<p style="text-align: right;">Page 847</p> <p>1 reimbursement?  2 A. This says draft. I -- I don't know  3 what the genesis of this was. I don't know why  4 it was prepared. I don't know what purpose it  5 was being used for. I don't know if it was even  6 ever used. It says draft. I just don't know. I  7 don't know why my name is on it.  8 Q. Could you go to the second page of this  9 draft, the one that starts "Health Care Fraud"?  10 A. Mm-hmm.  11 Q. See where it says "Providers and  12 manufacturers under scrutiny"?  13 A. Yes.  14 Q. And then the bullet point below that.  15 In 2001, it says, that 3,756 individuals were  16 excluded from Medicare and Medicaid, and there  17 were 423 criminal convictions. Do you see that?  18 A. Yes.  19 Q. Now, if a presentation had been  20 prepared at some time after 2001, since this is  21 talking about 2001, with your name on it  22 regarding health care fraud and exclusions from</p>

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<p style="text-align: right;">Page 848</p> <p>1 Medicare and Medicaid and criminal convictions,  2 do you think that's something that -- that they  3 would have run by you before they put your name  4 on the draft, from your recollection as to how  5 business was done at Abbott?  6 A. They could have prepared this draft and  7 then sent it to me after. There's no indication  8 that I even was involved in preparing this draft.  9 Q. Go to the next page, "Investigation of  10 Health Care Fraud." It says in 2001 -- this is  11 halfway down -- OIG recovered \$1.5 billion in  12 fines, recoveries, and penalties and 875 million  13 from TAP. Do you see that?  14 A. I do.  15 Q. Now, were you aware that OIG recovered  16 \$875 million from TAP in 2001?  17 A. Yes.  18 Q. And TAP was that affiliate or partially  19 owned corporation of Abbott that had  20 representatives on the Medicare working group,  21 wasn't it?  22 MS. TABACCHI: Object to the form.</p>	<p style="text-align: right;">Page 850</p> <p>1 whether you were even on that group back in 1997.  2 MS. TABACCHI: Objection.  3 BY MR. BREEN:  4 Q. Is that correct?  5 MS. TABACCHI: Asked and answered.  6 BY MR. BREEN:  7 Q. Is that correct?  8 A. I -- I seem to remember that there was  9 a Medicare working group. I don't remember  10 attending -- specifics about this group. I -- I  11 -- I know there was a Medicare working group, and  12 I said that earlier.  13 Q. Well, I'm not asking you if there was a  14 Medicare working group; we know that. I'm asking  15 if you have any recollection sitting here today  16 of having any involvement with it in 1997.  17 That's my question.  18 A. I don't remember.  19 Q. So but there's your name again. Do you  20 see that?  21 A. Yes.  22 Q. But that could be a mistake; maybe you</p>
<p style="text-align: right;">Page 849</p> <p>1 THE WITNESS: I don't know. I don't  2 know. Were they? I don't remember. I didn't  3 look to see if TAP was on the Medicare working  4 group.  5 BY MR. BREEN:  6 Q. Really. Well, let's go to some of  7 those exhibits then.  8 A. Yeah, we'd have to look. I don't  9 remember.  10 Q. Let's just pick any one. How about No.  11 13, dated January 15th, 1997. Purports to be an  12 e-mail correspondence -- and you're on it -- from  13 Mr. Rieger again. Do you see that?  14 A. Yes, I do.  15 Q. Regarding the Medicare working group.  16 A. Yes.  17 Q. Of course, you don't recall whether you  18 were even on the Medicare working group in '97,  19 do you?  20 A. I don't recall much about the Medicare  21 working group, no.  22 Q. You have no idea, sitting there today,</p>	<p style="text-align: right;">Page 851</p> <p>1 weren't even involved. Correct?  2 MS. TABACCHI: Object to the form.  3 THE WITNESS: My name is on there.  4 BY MR. BREEN:  5 Q. But that could be a mistake; maybe you  6 weren't involved. Correct?  7 MS. TABACCHI: Object to the form.  8 THE WITNESS: I -- I don't recollect.  9 So I can't answer that question.  10 BY MR. BREEN:  11 Q. Okay. Now, let's go down there, and  12 you'll see the first bullet point, "Discuss  13 Average Wholesale Price vs. actual cost issue."  14 Do you see that?  15 A. Yes.  16 Q. And what's the first drug under that  17 bullet point?  18 A. It says Lupron.  19 Q. And what -- did Abbott make Lupron?  20 MS. TABACCHI: Object to the form.  21 BY MR. BREEN:  22 Q. And market Lupron?</p>

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<p style="text-align: right;">Page 852</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: It was Takeda.</p> <p>3 BY MR. BREEN:</p> <p>4 Q. Takeda.</p> <p>5 A. TAP, TAP.</p> <p>6 Q. TAP.</p> <p>7 A. Takeda Abbott. It was our --</p> <p>8 Q. So why would TAP's drug be on a</p> <p>9 Medicare working group document with -- under</p> <p>10 Abbott stationery in 1997?</p> <p>11 A. I don't know.</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 BY MR. BREEN:</p> <p>14 Q. Okay. And then look down. You see</p> <p>15 Calcijex on there?</p> <p>16 A. Yes.</p> <p>17 Q. Now, who was -- well, let's go back up</p> <p>18 to the -- to the Tos. Do you see a guy's name</p> <p>19 there, John Campbell? Oh, he's not -- you're not</p> <p>20 on that one. Never mind.</p> <p>21 Do you see -- let's go to Exhibit 14,</p> <p>22 the next one.</p>	<p style="text-align: right;">Page 854</p> <p>1 A. Yes.</p> <p>2 Q. And it's -- it says "Abbott Position on</p> <p>3 Medicare Reform Key Participants." Do you see</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. And look down at the bottom. There's a</p> <p>7 date under the document's computer file called 2</p> <p>8 -- dated 2/7/97. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Now, under Corporate, we've got</p> <p>11 Jim Miller, Rich Rieger, and Cathy Babington. Do</p> <p>12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. You knew those folks, right?</p> <p>15 A. Yes.</p> <p>16 Q. And then under -- down towards the</p> <p>17 bottom, next-to-the-last, we've got TAP, John</p> <p>18 Campbell. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And that's TAP again, right?</p> <p>21 A. Yeah. Well, yes, I guess.</p> <p>22 Q. And then under HPD, we've got Dave</p>
<p style="text-align: right;">Page 853</p> <p>1 A. Yes.</p> <p>2 Q. Do you see Mr. -- you're on there</p> <p>3 again, right?</p> <p>4 A. Yes.</p> <p>5 Q. And, again, you don't recall if you</p> <p>6 were really on that group in '97. But did you</p> <p>7 know a Mr. John Campbell?</p> <p>8 A. The name is familiar. I don't remember</p> <p>9 him.</p> <p>10 Q. Do you see his name is one, two, three,</p> <p>11 four, five above yours?</p> <p>12 A. Yes.</p> <p>13 Q. And what's the name -- what's that --</p> <p>14 there's three letters next to his name. What is</p> <p>15 that?</p> <p>16 A. TAP.</p> <p>17 Q. And what -- and what does TAP mean to</p> <p>18 you?</p> <p>19 A. It means our joint venture, Takeda --</p> <p>20 Takeda Abbott Products.</p> <p>21 Q. Okay. And how about Exhibit 17, which</p> <p>22 is the next Bates number -- which is ABT 53216.</p>	<p style="text-align: right;">Page 855</p> <p>1 Olson, the director of strategic planning, right?</p> <p>2 A. Yes.</p> <p>3 Q. And then your name, Ginny Tobiason. Do</p> <p>4 you see that?</p> <p>5 A. Yes.</p> <p>6 Q. But sitting here today, is it your</p> <p>7 testimony, Ms. Tobiason, that you have no present</p> <p>8 recollection whatsoever of ever participating in</p> <p>9 a Medicare working group meeting when a</p> <p>10 representative of TAP was present? Is that your</p> <p>11 testimony?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 Asked and answered.</p> <p>14 THE WITNESS: I don't recollect who</p> <p>15 attended these meetings and which meetings I even</p> <p>16 attended.</p> <p>17 BY MR. BREEN:</p> <p>18 Q. That's not my question. My question</p> <p>19 is, do you have any recollection of ever</p> <p>20 attending a Medicare working group meeting when a</p> <p>21 TAP representative was present?</p> <p>22 A. I have no recollection.</p>

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<p style="text-align: right;">Page 856</p> <p>1 Q. Okay. Now, can you go to Exhibit 27?</p> <p>2 A. You know, I'm -- I'm getting a little</p> <p>3 tired. Do you think we're going to be finishing</p> <p>4 soon?</p> <p>5 MR. BREEN: I think your counsel is</p> <p>6 going to ensure that we finish within the next 15</p> <p>7 minutes, but if you'd like to take a break, I'd</p> <p>8 be happy to do that.</p> <p>9 THE WITNESS: Yeah, let's take a few --</p> <p>10 a minute break. That would be great.</p> <p>11 MR. BREEN: That's fine.</p> <p>12 THE VIDEOGRAPHER: We are off the</p> <p>13 record at 4:42 p.m.</p> <p>14 (Recess taken.)</p> <p>15 THE VIDEOGRAPHER: We are back on the</p> <p>16 record at 4:47 p.m.</p> <p>17 BY MR. BREEN:</p> <p>18 Q. Now, do you have Exhibit 25 in front of</p> <p>19 you?</p> <p>20 A. No.</p> <p>21 Q. Why don't you get 25. It's shorter.</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 858</p> <p>1 "Increased costs," "Inflated or distorted costs,"</p> <p>2 "Selection of inappropriate product or services."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Now, was it your understanding at the</p> <p>6 time that this presentation was prepared that</p> <p>7 some -- some of the purposes of the anti-kickback</p> <p>8 and false claims statutes was to prevent these</p> <p>9 items that are listed here?</p> <p>10 A. Yeah, my understanding was really from</p> <p>11 the DME perspective, and definitely</p> <p>12 overutilization or selection of inappropriate</p> <p>13 product or services, yes.</p> <p>14 Q. And by the way, when you mention the</p> <p>15 DME perspective, are you including in the DME</p> <p>16 perspective -- when you say DME, to your</p> <p>17 knowledge, does that include the pumps that are</p> <p>18 used to infuse infusion medications of the type</p> <p>19 that were sold by the HPD division?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Pumps? Yeah, pumps were</p> <p>22 part of the DME, yeah.</p>
<p style="text-align: right;">Page 857</p> <p>1 Q. All right. Now, as I recall it, you</p> <p>2 have no recollection of this document, correct?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 Mischaracterizes the witness's testimony.</p> <p>5 THE WITNESS: I do recollect that form.</p> <p>6 BY MR. BREEN:</p> <p>7 Q. Okay. Then I'm mistaken then. Can you</p> <p>8 -- do you recall this document?</p> <p>9 A. Yes. It was on my files as a</p> <p>10 presentation to Ross.</p> <p>11 Q. Okay. And do you recall participating</p> <p>12 in the preparation of this document?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. If you could go to the fourth</p> <p>15 page, which is ABT-DOJ 0377096. It says</p> <p>16 "Reimbursement Information and Support" and then</p> <p>17 "Anti-Kickback and False Claims." Do you see</p> <p>18 that?</p> <p>19 A. Mm-hmm. Yes.</p> <p>20 Q. All right. Now, it says here that --</p> <p>21 the word "Prevent," and then it has</p> <p>22 "Overutilization or unnecessary purchases,"</p>	<p style="text-align: right;">Page 859</p> <p>1 BY MR. BREEN:</p> <p>2 Q. So when -- when you -- when the</p> <p>3 reimbursement services -- or when the -- the home</p> <p>4 infusion services would provide reimbursement</p> <p>5 assistance to customers that were providing home</p> <p>6 infusion services, did it include billing for the</p> <p>7 pumps?</p> <p>8 A. Yes.</p> <p>9 Q. As a matter of fact, Medicare Part B</p> <p>10 would only pay for home infusion services when</p> <p>11 the medication was delivered by way of a durable</p> <p>12 medical equipment device such as a pump, correct?</p> <p>13 A. Well, that's part of it.</p> <p>14 Q. When it -- is that correct?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: Or if it was under the --</p> <p>17 the infusion benefit, yes.</p> <p>18 BY MR. BREEN:</p> <p>19 Q. And the pump was paid for -- and there</p> <p>20 was a certain amount of profit associated with</p> <p>21 the reimbursement for the pump by Medicare,</p> <p>22 correct?</p>

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<p style="text-align: right;">Page 860</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 THE WITNESS: There was a reimbursement</p> <p>3 amount that was reimbursed. Whether it generated</p> <p>4 profit or not, I can't say.</p> <p>5 BY MR. BREEN:</p> <p>6 Q. But the pump was not reimbursed on the</p> <p>7 basis of cost, was it?</p> <p>8 MS. TABACCHI: Object to the form.</p> <p>9 THE WITNESS: It was based on a fee</p> <p>10 schedule.</p> <p>11 BY MR. BREEN:</p> <p>12 Q. Fee schedule. Okay. Thank you.</p> <p>13 Now, would you agree with me that if a</p> <p>14 drug company took action to cause its AWP's to be</p> <p>15 reported at an inflated amount -- for example,</p> <p>16 1,000 percent higher than the actual cost of the</p> <p>17 drugs -- that that would contribute to increase</p> <p>18 costs to the Medicare or Medicaid programs?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: That would call for</p> <p>21 speculation on my part. I -- I don't know.</p> <p>22 BY MR. BREEN:</p>	<p style="text-align: right;">Page 862</p> <p>1 A. I do.</p> <p>2 Q. The first topic there is "Third-party</p> <p>3 profitability." Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And prior to preparing this</p> <p>6 presentation, had anybody at Abbott ever told you</p> <p>7 that it was not appropriate for salespeople from</p> <p>8 Abbott to talk about third-party profitability</p> <p>9 with customers?</p> <p>10 A. I actually don't recall.</p> <p>11 Q. But you would agree with me that at</p> <p>12 least by the time that you prepared this</p> <p>13 presentation, you knew that it was not</p> <p>14 appropriate --</p> <p>15 A. Mm-hmm.</p> <p>16 Q. -- for Abbott salespeople to discuss</p> <p>17 third-party profitability with customers,</p> <p>18 correct?</p> <p>19 A. I think we thought it wasn't</p> <p>20 appropriate, yes.</p> <p>21 Q. But you have no present recollection as</p> <p>22 to whether or not you thought it was appropriate</p>
<p style="text-align: right;">Page 861</p> <p>1 Q. Would you agree that there's a</p> <p>2 possibility it could result in increased costs to</p> <p>3 the Medicare or Medicaid -- and the Medicaid</p> <p>4 programs?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: I -- I think it would</p> <p>7 depend on what the actual reimbursement amount</p> <p>8 was. I just -- I don't know how to answer that</p> <p>9 question.</p> <p>10 BY MR. BREEN:</p> <p>11 Q. Okay. So depending on the</p> <p>12 reimbursement amount then, as far as you know?</p> <p>13 A. Yes.</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 BY MR. BREEN:</p> <p>16 Q. Okay. Now, if you could go to --</p> <p>17 several pages ahead. It's workbook page -- well,</p> <p>18 they're all 35, so that doesn't help. DOJ</p> <p>19 0377104 begins with "Key Concepts."</p> <p>20 A. Mm-hmm.</p> <p>21 Q. And "Topics not appropriate when</p> <p>22 selling to Customers." Do you see that?</p>	<p style="text-align: right;">Page 863</p> <p>1 before you prepared this presentation, correct?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 You're asking a different question now.</p> <p>4 MR. BREEN: It is a different question.</p> <p>5 That's why I'm asking it.</p> <p>6 Could you read the question back,</p> <p>7 please? Thank you.</p> <p>8 (Record read.)</p> <p>9 MS. TABACCHI: Object to the form.</p> <p>10 THE WITNESS: I could have thought it</p> <p>11 was appropriate, not appropriate. I -- I just</p> <p>12 don't recall.</p> <p>13 BY MR. BREEN:</p> <p>14 Q. Okay. Now if you'd go to -- almost to</p> <p>15 the end. It's DOJ 0377113, "Field Sales Can't</p> <p>16 Do's." Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. "Cannot Provide: AWP's." Do you see</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have a present recollection as</p> <p>22 to whether or not you knew that it was not</p>

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1 appropriate for field sales personnel to provide  
2 AWP's to customers before your involvement with  
3 this presentation?

4 MS. TABACCHI: Object to the form.

5 THE WITNESS: Say that again.

6 BY MR. BREEN:

7 Q. I'll restate the question. Let's do it  
8 this way. Well, you will agree with me, won't  
9 you, that at least by the time you prepared this  
10 presentation or participated in its preparation,  
11 you believed it would not be appropriate for  
12 field sales reps to provide AWP's to customers.  
13 Correct?

14 MS. TABACCHI: Object to the form.

15 THE WITNESS: I think at this point we  
16 felt it was better if sales reps didn't provide  
17 this information.

18 BY MR. BREEN:

19 Q. So you called it a "can't do," correct?

20 A. Yes.

21 Q. All right. Okay. Now, do you have a  
22 present recollection of -- before you did this

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1 presentation of believing that it would not be  
2 appropriate for a field sales rep to provide AWP  
3 information to customers?

4 MS. TABACCHI: Object to the form.

5 THE WITNESS: I actually don't -- don't  
6 know if I had an opinion or not.

7 BY MR. BREEN:

8 Q. Okay. Now, two bullets down,  
9 "Profitability information or calculation tools,"  
10 and, in parens, "marketing the spread." Do you  
11 see that?

12 A. Mm-hmm, yes.

13 Q. Now, when you prepared the presentation

14 --

15 A. Mm-hmm.

16 Q. -- did you believe it would not be  
17 appropriate for field sales representatives to  
18 discuss profitability information or calculation  
19 tools or market the spread with customers?

20 MS. TABACCHI: Object to the form.

21 THE WITNESS: That appears to be what  
22 it -- what it says here, yes.

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1 BY MR. BREEN:

2 Q. Okay. Do you have a present  
3 recollection today of whether or not you thought  
4 that providing profitability information or  
5 calculation tools, marketing the spread, was  
6 inappropriate before you prepared this  
7 presentation?

8 MS. TABACCHI: Object to the form.

9 MR. BREEN: What's wrong with that  
10 question, Counsel?

11 MS. TABACCHI: You haven't established  
12 a foundation that she's prepared -- your  
13 questions assume that she is the one that  
14 prepared this. It's inconsistent.

15 BY MR. BREEN:

16 Q. All right. Let me ask the question  
17 this way.

18 A. Mm-hmm.

19 Q. At the time that this presentation was  
20 -- was prepared, did you believe it would be  
21 inappropriate for field sales reps to discuss  
22 profitability information or calculation tools,

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1 i.e., marketing the spread, with customers?

2 A. I believed it was better not to provide  
3 this information.

4 Q. So you believed it was a "can't do,"  
5 correct?

6 A. Well, I reviewed this presentation, so  
7 I suppose I agreed with what they were saying  
8 here.

9 Q. And did you agree that that was  
10 Abbott's policy, that it was a "can't do" as of  
11 the time of this presentation?

12 A. I believe that this policy was  
13 applicable to Ross.

14 Q. Oh. So was it inapplicable to the rest  
15 of Abbott?

16 A. I don't know. I wouldn't -- I wouldn't  
17 know that.

18 Q. Well, right now your position at Abbott  
19 is what?

20 A. I don't remember if it -- I might have  
21 just joined OEC at that point. So I was pretty  
22 new in the position, I believe.

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<p style="text-align: right;">Page 868</p> <p>1 Q. Okay. Is it a -- is this particular 2 conduct a "can't do" for all Abbott salespeople 3 today? 4 A. It -- it would be a violation of our 5 policy. 6 Q. Okay. Now, do you have a present 7 recollection, sitting here today, as to whether 8 it was a violation of any Abbott policy for any 9 division prior to the time of this presentation 10 for salespeople to discuss profitability 11 information or calculation tools such as 12 marketing the spread? 13 A. I -- I don't know. I don't know if 14 there was a policy. I don't remember. 15 Q. Okay. Go to the next page. Can't do, 16 first bullet point, "Conduct reimbursement 17 presentations to Customers." Do you see that? 18 A. Yes. 19 Q. At the time that this presentation was 20 prepared, the one that's now Exhibit 25, did you 21 believe that it was improper for Ross sales 22 personnel to conduct reimbursement presentations</p>	<p style="text-align: right;">Page 870</p> <p>1 responsibilities? 2 A. Well, I do review reimbursement 3 materials to assure that they comply with our 4 reimbursement policy. 5 Q. Okay. So today is it okay for Abbott - 6 - any Abbott employee to market an Abbott product 7 by showing the customer that Medicare or Medicaid 8 reimbursement based upon Abbott's inflated AWP's 9 will result in a significant profit to the 10 customer if the customer buys Abbott's drugs? Is 11 that okay today at Abbott? 12 MS. TABACCHI: Object to the form. 13 THE WITNESS: Our policy is that cus -- 14 that sales -- that Abbott employees cannot 15 discuss profits with customers. 16 BY MR. BREEN: 17 Q. Can they discuss AWP's at all with 18 customers? 19 A. Sales -- managed care can provide AWP's. 20 All other Abbott employees are prohibited. 21 Q. Okay. And to your knowledge, does 22 Abbott have any policy in place designed to</p>
<p style="text-align: right;">Page 869</p> <p>1 to customers? 2 THE WITNESS: Repeat that question. 3 (Record read.) 4 THE WITNESS: I believe that it's 5 better if -- if the information is not provided 6 by the sales reps. 7 BY MR. BREEN: 8 Q. As a matter of fact, today that's a 9 violation of Abbott policy companywide, correct? 10 A. There are instances where there can be 11 reimbursement presentations to customers. It -- 12 there -- and there can also be exceptions to 13 policy. So that's not a blanket -- 14 Q. Now -- 15 A. -- policy. 16 Q. -- you work in the corporate compliance 17 department now, right? 18 A. No. 19 Q. You work in what right now? 20 A. Government affairs. 21 Q. Government affairs. Okay. You no 22 longer have any corporate compliance</p>	<p style="text-align: right;">Page 871</p> <p>1 ensure that it doesn't report information that 2 will result in inflated AWP's? 3 MS. TABACCHI: Object to the form. 4 THE WITNESS: That's not in the 5 reimbursement information. I'm sure they do, but 6 I don't know it. I don't -- I'm sure they do, 7 but I don't know where it is. 8 BY MR. BREEN: 9 Q. Okay. But you're just speculating when 10 you say you're sure they do? 11 A. I -- I am actually speculating. I have 12 no idea. 13 Q. Okay. Right. You have no information 14 available to you -- 15 A. Right. 16 Q. -- one way or the other, do you? 17 A. Right, no. 18 MR. BREEN: Okay. It's 6:02, and we 19 said we were going to end unless -- 20 THE WITNESS: 5:02. 21 MR. SISNEROS: 5:02. 22 MR. BREEN: Sure, 5:02.</p>

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<p style="text-align: right;">Page 872</p> <p>1 MS. TABACCHI: It feels like 6:02.  2 MR. BREEN: Is that fine?  3 MS. ST. PETER-GRIFFITH: Yeah, that's  4 fine --  5 THE WITNESS: Feels like 8:02.  6 MS. ST. PETER-GRIFFITH: -- except the  7 United States would make the reservation that at  8 present, Abbott's production appears to be still  9 ongoing, and it sounds like there might be some  10 production concerning Ms. Tobiason and her e-  11 mails that predate 2002 that have not been  12 produced.  13 So the United States reserves the right  14 to recall this witness in the event that Abbott  15 produces additional documents.  16 MR. SISNEROS: California makes the  17 same reservation. We are just initiating our  18 discovery in our case.  19 Additionally -- and this is in an  20 effort to bring a common into this case. Would  21 you be willing to stipulate that California can  22 use as their own the deposition of Ms. Tobiason</p>	<p style="text-align: right;">Page 874</p> <p>1 (Off-the-record discussion.)  2 MS. TABACCHI: We'll reserve signature.  3 Mark it also --  4 MS. ST. PETER-GRIFFITH: Tina, will she  5 be reading now that we're done?  6 MS. TABACCHI: Yeah. As soon as we're  7 done, yeah, we'll send it back to you when it's  8 final --  9 MS. ST. PETER-GRIFFITH: Okay.  10 MS. TABACCHI: -- because I don't think  11 she read the other one.  12 MS. ST. PETER-GRIFFITH: Yeah, that's  13 what I meant is that will she be --  14 MS. TABACCHI: Yeah. Okay. I need to  15 talk to her about that. Okay.  16 (Proceedings concluded at 5:04  17 p.m.)  18  19  20  21  22</p>
<p style="text-align: right;">Page 873</p> <p>1 taken in, I guess, the Texas case, part of the  2 MDL, on March 28th, 2007?  3 MR. BREEN: I think you already agreed  4 to that, haven't you?  5 MS. TABACCHI: We did have this  6 agreement off the record. I think Eliseo is just  7 putting it on the record.  8 MR. SISNEROS: Okay. Thank you.  9 MS. TABACCHI: I'm taking you on good  10 faith that you're not going to go out of your way  11 to ask Ms. Tobiason questions again some other  12 day.  13 MR. SISNEROS: No, no, no.  14 MS. TABACCHI: But we can address that  15 when --  16 MR. SISNEROS: But if I do ask her  17 questions, it's going to be on new material.  18 MR. BREEN: Are you done?  19 MR. SISNEROS: We're done.  20 THE VIDEOGRAPHER: We are off the  21 record at 5:03 p.m. with the conclusion of the  22 deposition of Virginia Tobiason.</p>	<p style="text-align: right;">Page 875</p> <p>1 ACKNOWLEDGMENT OF DEPONENT  2  3 IN RE PHARMACEUTICAL ) MDL No. 1456  4 INDUSTRY AVERAGE WHOLESALE ) Master File No.  5 PRICE LITIGATION ) 01-12257-PBS  6  7 I hereby certify that I have read the  8 foregoing transcripts of my deposition,  9 consisting of pages 559 to 874 and given at the  10 times and places aforesaid, and I do again  11 subscribe and make oath that the same are true,  12 correct, and complete transcripts of my deposition  13 so given as aforesaid and include changes, if any,  14 so made by me.  15  16  17 VIRGINIA TOBIASON  18 SUBSCRIBED AND SWORN TO before me this ____ day  19 of _____, A.D. 2008.  20  21  22 Notary Public</p>

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1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF C O O K )

4 I, LAURA R. RENKE, a Certified Shorthand  
Reporter within and for the State of Illinois, do  
hereby certify:5 That previous to the commencement of the  
examination of the witness, the witness was duly  
6 sworn to testify the whole truth concerning the  
matters herein;7 That the foregoing deposition was  
reported stenographically by me, was thereafter  
8 reduced to an electronic transcript by me,  
pages 559 through 876, inclusive, and constitutes  
9 a true record of the testimony given and the  
proceedings had;10 That the said deposition was taken  
before me at the time and place specified;11 That the reading and signing by the  
witness of the deposition transcript was agreed  
12 upon as stated herein;13 That I am not a relative or employee or  
attorney or counsel, nor a relative or employee of  
such attorney or counsel for any of the parties  
14 hereto, nor interested directly or indirectly in  
the outcome of this action.15 IN WITNESS WHEREOF, I do hereunto set my  
hand at Chicago, Illinois, this 29th day of  
16 January, 2008.

17

18

19 \_\_\_\_\_  
Certified Shorthand Reporter

20 State of Illinois

21

22 CSR License No. 084-003184.

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